(15,477.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 620.

THE PATAPSCO GUANO COMPANY, APPELLANT,

vs.

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS ET AL., COMMISSIONERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 24, 1894.

1 *Caption.*

In the Circuit Court of the United States for the Eastern District of North Carolina, held in the city of Raleigh, in the district aforesaid, before the Hon. Augustus S. Seymour, district judge of said district, presiding, sitting in equity, on Monday, the 5th day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and ninety-three, convened on the first Monday in June of said year.

Title of Cause.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers who may Come in and Make Themselves Parties Hereto and Contribute to the Costs and Expenses of this Suit,

against

THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, and John Robinson, Commissioner of Agriculture.

Filing of Pros. Bond & Original Bill.

Be it remembered that on the 1st day of April, in the year of our Lord one thousand eight hundred and ninety-two, the Patapsco Guano Company, in behalf of itself and all other non-resident dealers and manufacturers of commercial fertilizers who shall come in and make themselves parties hereto and contribute to the costs and expenses of this suit, by their attorneys, Thos. N. Hill and Jno. W. Hinsdale, filed in the office of the clerk of the cir-
2 cuit court of the United States for the eastern district of North Carolina, at Raleigh, in said district, their prosecution bond and also their original bill in equity against The Board of Agriculture of North Carolina and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, and John Robinson, commissioner of agriculture; which said bond and original bill are in the words and figures following, to wit:

3 UNITED STATES OF AMERICA,
Eastern District of North Carolina.

Circuit Court at Raleigh, Fourth Circuit.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties to and Contribute to the Expenses of this Suit,

against

THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. S. Primrose, W. F. Green, H. E. Fries, N. B. Broughton, W. R. Williams, J. B. Coffield, W. R. Capehart, J. F. Payne, J. S. Murrow, W. E. Stevens, S. L. Patterson, C. D. Smith, A. Leazar, Elias Carr, and John Robinson, Commissioner of Agriculture of North Carolina. } Prosecution Bond.

Know all men by these presents that we, the Patapsco Guano Co., as principal, and Geo. W. Grafflin and William H. Grafflin, as sureties, are held and firmly bound unto the defendant in the above-entitled action in the sum of two hundred dollars; to the payment of which we bind ourselves firmly by these presents.

Sealed with our seals and dated this 1st day of April, 1892.

The condition of the above obligation is such that whereas the plaintiff in the above-named cause has brought a suit against the defendant therein: Now, if the said plaintiff shall prosecute said suit with effect or in case it fail therein shall well and truly pay all such costs as shall be awarded and recovered against the said plaintiff in said action, then the above obligation to be void; otherwise it is to remain in full force and effect.

GEO. W. GRAFFLIN, *Pr's't.* [SEAL.]
GEO. W. GRAFFLIN. [SEAL.]
WM. H. GRAFFLIN. [SEAL.]

Taken and acknowledged before me this — day of April, 1892.

JAS. W. CHEW,
Clerk Circuit Court U. S., District of Maryland. [SEAL.]

Prosecution bond. Filed April 14th, 1892. N. J. Riddick, clerk.

4 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties to and Contribute to the Expenses of this Suit,

against

THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. F. Green, W. R. Williams, R. W. Wharton, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, and John Robinson, Commissioner of Agriculture.

To the honorable the judges of the circuit court of the United States for the fourth circuit and eastern district of North Carolina:

The Patapsco Guano Company, a citizen and resident of the State of Maryland, brings this its bill in behalf of itself and all other non-resident dealers and manufacturers of commercial fertilizers who shall come in and make themselves parties to and contribute to the expenses of this suit against The Board of Agriculture of North Carolina and W. F. Green, R. W. Wharton, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, who constitute the board of agriculture of North Carolina, and John Robinson, commissioner of agriculture, citizens and residents of the State of North Carolina; and thereupon your orator complains and says:

I. That the Patapsco Guano Company is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Maryland.

II. That it has been for a number of years engaged in
5 Baltimore, Maryland, in the manufacture and sale of manipulated guano or commercial fertilizers of different brands, and that it has a large amount of capital invested in buildings, machinery, and materials used in the manufacture of said fertilizers of the aggregate value of over three hundred thousand dollars, and your orator states that in the general business of the manufacture of fertilizers for sale in this State and the sale of the same in this State it is not too much to say that many millions of dollars of capital are invested and used and thousand- of agents and laborers employed and paid.

III. That it has been selling said fertilizers in the State of North Carolina for a number of years, and that it has at great labor and expense built up a profitable business therein; that in conducting its said business in said State it is obliged to employ a large number of persons in different parts thereof as agents, and without such agents it could not properly or profitably conduct its said business; that the annual business of your orator in the State of North Caro-

lina amounts to upwards of one hundred thousand dollars, upon which the profits largely exceed ten thousand dollars a year.

IV. That the season for the sale of fertilizers for use on summer and fall crops has now arrived, and that your orator has manufact--red a great quantity of goods and is now ready to put them on the market, and that the demand for them is already very large; that your orator is continuing and desires to continue to manufacture a large quantity of said goods, to meet the further demands of the season as it progresses.

V. That it has already shipped a quantity of its said fertilizers into North Carolina for sale, and is now shipping more and desires to continue to ship to the said State a large quantity
6 of its said goods to meet the requirements of its trade and the increasing demand of the public for the same.

VI. That in this condition of things the defendants The Board of Agriculture and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, R. W. Wharton, who constitute the board of agriculture, and the defendant John Robinson, commissioner of agriculture of said State, all of whom are citizens and residents of the said State, the said board of agriculture being created and organized under chapter one, volume two, of the Code of North Carolina, as amended by subsequent laws, and having its office in the city of Raleigh, in the eastern district of North Carolina, give out and threaten that they will make seizures of all fertilizers which your orator has shipped or shall ship into this State unless the same shall be tagged in accordance with the act of General Assembly of North Carolina entitled "An act to amend chapter one, volume two, of the code relating to agriculture and geology," and ratified on Jan'y 21st, 1891, and that they will institute criminal prosecutions for an alleged misdemeanor against each of your orator's agents who may sell or offer for sale and against all other persons to whom your orator may sell for resale upon each and every sale or offer for sale made or to be made or attempted to be made by such agents or other persons.

VII. That the said defendants claim that your orator's goods are liable to seizure, and its agents and other purchasers for resale of its fertilizers are liable to criminal prosecutions under sections 2190, 2191, 2192, 2193, and 2194 of the Code of North Carolina,
7 amended by the above-entitled act, which reads as follows:

"For the purpose of defraying the expenses connected with the inspection of fertilizers and fertilizing materials in this State there shall be a charge of 25c. per ton on such fertilizers and fertilizing materials for each fiscal year ending November 13th, which shall be paid before delivery to agents, dealers, or consumers in this State: Provided, the board shall (have) the discretion to exempt certain natural materials as may be deemed expedient. Each bag, barrel or other package of such fertilizers or fertilizing materials shall have attached thereto a tag stating that all charges specified in this section have been paid, and the State board of agriculture is hereby empowered to prescribe a form for such tags,

and to adopt such regulations as will enable them to enforce this law. Any person, corporation, or company who shall violate this chapter or who shall sell or offer for sale any such fertilizers or fertilizing material contrary to the provisions above set forth shall be guilty of a misdemeanor, and all fertilizers or fertilizing materials so sold or so offered for sale shall be subject to seizure and condemnation in the same manner as is provided in this chapter for the seizure and condemnation of spurious fertilizers, subject, however, to the discretion of the board of agriculture to release the fertilizers so seized and condemned upon the payment of the charge above specified and all costs and expenses incurred by the department in such proceedings: Provided, that tags shall be attached by manufacturers, agents, or dealers to all fertilizers now in the State; those protected under licenses previously issued shall be furnished free of charge."

SEC. 2191. Every bag, barrel, or other package of such fertilizer or fertilizing materials as above designated offered for sale in this State shall have thereon plainly printed a label or stamp, a copy of which (shall be filed with the commissioner of agriculture) 8 together with a true and faithful sample of the fertilizer or fertilizing material which it is proposed to sell at or before delivery to agents, dealers, or consumers in this State, and which shall be uniformly used and shall not be changed during the fiscal year for which tags are issued, and the said label or stamp shall truly set forth the name, location, and trade-mark of the manufacturer; also the chemical composition of the contents of such package and the real percentage of any of the following ingredients asserted to be present, to wit, soluble and precipitated phosphoric acid, which shall not be less than 8 per cent.; soluble potassa, which shall not be less than one per cent.; ammonia, which shall not be less than 2 per cent., or its equivalent in nitrogen; together with the date of its analyzation and that the requirements of the law have been complied with; and any such fertilizer as shall be ascertained by analysis not to contain the ingredients and percentage set forth as above provided shall be liable to seizure and condemnation as hereinafter prescribed, and when condemned shall be sold by the board of agriculture for the exclusive use and benefit of the department of agriculture.

SEC. 2192. The proceedings to condemn the sale shall be by civil action in the superior court of the county where the fertilizer is on sale and in the name of the board of agriculture, who shall not be required to give bond for the prosecution of said action; and at or before the summons is issued the said board shall, by its agent, make affidavit before the clerk of the said court of these facts: (1.) That charges have been paid as hereinbefore provided and the lawful tags attached. (2.) That the sample of the same filed with the commissioner of agriculture has been analyzed under authority of the board and found to correspond with the label attached to the same. (3.) That the defendant in the summons has in 9 his possession and on sale fertilizers of the same name and brand and bearing a label or stamp representing the analysis

made; (4.) That all fertilizers on hand and on sale are spurious and do not in fact contain the ingredients or in the percentage represented by the stamp or label on them, whereupon the clerk shall issue his order to the sheriff of the county to seize and hold all fertilizers in the possession of the defendant labelled or stamped as the affidavit described, and the sheriff shall seize and hold the fertilizers so seized until ordered to be surrendered by the judge unless the defendant shall give bond, with justified surety in double the value of the fertilizers seized, to answer the judgment of the court, in which case he shall surrender the fertilizers to the defendant and file this bond in the office of the clerk of the superior court, and thereafter the action shall be prosecuted according to the course of the court, and if it shall be established in the trial that the fertilizers seized are deficient or inferior to the analysis represented on the stamp or brand then the plaintiff in said action shall recover judgment on the defendant's bond for the value of the fertilizers seized.

SEC. 2193. Any merchant, trader, manufacturer, or agent who shall sell or offer for sale any commercial fertilizer or fertilizing material without having such labels, stamps, and tags as hereinbefore provided attached thereto or shall use the required tag the second time to avoid the payment of the tonnage charge, or if any person shall remove any such fertilizer (he) shall be liable to a fine of ten dollars for each separate bag, barrel, or package sold, offered for sale, or removed, to be sued for before any justice of the peace and to be collected by the sheriff by distress or otherwise, one-half less the costs to go to the party suing and the remaining half to the department; and if any such fertilizer shall be condemned as herein provided it shall be the duty of the department to have an analysis made of the same and cause printed tags or labels expressing the true chemical ingredients of the same put upon each bag, barrel, or package, and shall fix the commercial value thereof at which it may be sold, and any person who shall sell, offer for sale, or remove any such fertilizers, or any agent of any railroad or other transportation company who shall deliver any such fertilizer in violation of this section shall be guilty of a misdemeanor.

VIII. That under this law taxes amounting to between $30,000 and $40,000 are annually exacted from the manufacturers of fertilizers doing business in the State of North Carolina.

IX. That it is pretended and claimed that this tax is valid as a police regulation of the State of North Carolina for the maintenance of an analysing station to prevent the introduction and sale in the State of fraudulent and spurious fertilizers and for the protection of the farmers of the State from imposition by unscrupulous manufacturers and dealers, whereas not more than one-fifth of the said tax is necessary for this purpose, the residue thereof being appropriated to the support of a large number of unnecessary employees and indirectly to the support of the Agricultural & Mechanical college, which has no connection, proximate or remote, with the department of agriculture in its supervision of the fertilizer interest and its pro-

tection of the farmer as above set forth, and to many other objects and enterprises foreign to the analysis of fertilizers and the exclusion of spurious compositions from the State.

X. That the act establishing the department of agriculture distinctly provides that out of and with the taxes thus to be collected from your orator and other manufacturers and dealers in commercial fertilizers there shall be established and supported an ag-
11 ricultural experiment and fertilizer central station whose duty it shall be to carry on an experimental farm and to analyze marls, soils, mineral and other products, drinking water and articles of food for the State geologist and other citizens of the State; to keep up a geological museum; to print the various productions of the State geologist; to prepare and publish a hand book of the mines, minerals, forests, climates, waters and water powers, fishing, mountains, swamps, industries, and all such statistics as are best adapted to give proper information to immigrants and to make illustrative expositions thereof whenever practicable at international exhibitions, and to offer premiums for the encouragement of agricultural and mechanical pursuits and the raising of improved live stock in the State, and to employ immigration agents in this and foreign countries; to establish a land and mining registry; to appropriate $500 to the N. C. Industrial Association; to appoint and supervise a State geologist and fix his salary, who is to make surveys and reports, the expenses thereof to be paid by the agricultural department, the said geologist having authority to employ as many proper agents and assistants, to be approved by the governor, as may be necessary to enable him speedily and successfully to accomplish the object committed to his charge.

XI. That out of the receipts of the year 1891 the said board of agriculture appropriated out of the funds thus raised, in two items alone, June 19th, 1891, experiment station, $7,000; June 20th, 1891, N. C. Car A. & A., $2,065.51; that the said board appropriated in one item, Jan'y 27th, 1892, to board of World's Fair work, $9,000; that thousands of dollars thus raised are paid to the public printer, and that it is perfectly manifest that but a small portion of the taxes thus collected by the defendant is required for the legitimate purpose of defraying the actual expenses of analyses of
12 commercial fertilizers, if, indeed, this be a legitimate purpose.

XII. That, as your orator is advised and believes and so charges, the said laws imposing the said tonnage tax of 25c. upon each and every ton of commercial fertilizer brought into or sold within the State, and making it a misdemeanor for any one to introduce into or sell in the State any brand of fertilizer upon which the said tax has not been paid, is simply a regulation of commerce between the States and has the result to prevent a large number of manufacturers of fertilizers in other States from shipping their goods into or selling them within the State of North Carolina; that the said law, as your orator is informed and believes, is unconstitutional and void.

XII*a*. That the said law is in letter and in spirit an impost or

duty levied by the State of North Carolina upon all imported fertilizers, and, as your orator is informed and believes, is unconstitutional and void.

XIII. That your orator is informed and believes and so charges that the imposition upon it of the tax of 25c. a ton upon each ton of fertilizer shipped by it into the State and the requirement that a tag shall be purchased for each package of fertilizer is illegal and oppressive; that the attaching of such tags to their packages is wholly unnecessary, as it communicates no information to the purchaser which he did not have before and which is not to be obtained from the printed stamp or label which accompanies each package of fertilizer. One of said tags actually issued by the said commissioner and which has been duly paid for is herewith exhibited, marked "A," and prayed to be taken as part of this bill.

XIV. Your orator further shows that if the defendants are permitted to carry into execution their threat to make a seizure in every case of shipment or sale or attempted sale of your orator's fertilizers, the statute allowing them to do so without giving a bond of any sort to protect your orator against an illegal action, and if they are permitted to institute criminal prosecutions at their
13 pleasure for selling or attempting to sell fertilizers upon which the tax has not been paid, your orator and its agents and customers will be subjected to a multiplicity of interminable and oppressive suits, equally vexatious and fruitless, and to an avalanche of reckless prosecutions, and that their business in the State will be utterly destroyed and it will suffer irreparable loss and damage.

XV. Your orator further charges that the inevitable effect of the attempted enforcement of the invalid and unconstitutional law, the threats to enforce which have been already widely circulated and which must become more and more generally known among the people, and the efforts which have been made by the commissioner of agriculture, who is unable to respond in damages to your orator, to create a prejudice among the farmers against any fertilizers upon which the tax has not been paid, will be to cause many users of fertilizers to hesitate and altogether decline to purchase the goods manufactured and offered for sale by your orator; that some of them will entertain fears that the purchasers of such goods may be subjected to some penalty, or at least involve them in trouble in court or otherwise, and few persons will have either the inclination or means to investigate the question for themselves or, indeed, would be willing to act upon their own judgment if they should be prepared to form one; that thus your orator charges that, unless it shall pay the said illegal tonnage tax, the goods will have stamped upon them, in the eyes of the people, the stigma of illegality and litigeousness, and the trade and business of your orator will be irreparably damaged.

14 XV*a*. That within the last few days there has come to the knowledge of your orator the case of one of its agents in the city of Raleigh who has been representing it and selling the fertilizers of your orator and who through fear of involving himself in

difficulty and criminal prosecution has declined to continue to act as such agent and to make sales of your orator's goods to his customers unless said goods shall be tagged according to the fertilizer laws of the State.

XV*b*. That likewise, within the last few days, your orator has caused to be shipped to a party in the city of Raleigh a ton of its guano, but that the railroad company, upon receiving the same in Raleigh, has refused to make delivery to the said consignee because the said guano is not tagged according to the fertilizer laws of the State; that the said company has been forbidden by the department of agriculture to deliver any fertilizers which have not been tagged according to the said requirements of the law, and if the railroads are to be thus interfered with and prevented from transporting and delivering your orator's fertilizers in North Carolina its business in said State will be destroyed and it will suffer irreparable loss and damage.

XVI. Your orator also believes and so charges that among its competitors in business some are understood to have purchased the commissioner's tax tags, some others will no doubt do so, and among these or among the numerous agents employed by them will be found some who, for the purpose of advancing their own sales or for error as to the validity of the said fertilizer-tax law, will do what they can to decrease complainant's goods as unlawful subjects of sale or purchase and thus alarm and deter purchasers from purchasing, for which your orator will suffer irreparable loss and damage.

XVII. Your orator avers that it is in the enjoyment of a large trade in North Carolina and that, even though in the near future the said fertilizer-tax law may be shown to be illegal and its enforcement abandoned, yet the trade which your orator shall have in the meantime lost from any of the causes aforesaid and which they have built up by many years of labor and attention and the investment and expenditure of large sums of money will be exceedin-ly hard, if not impossible, to recover at all, and thus your orator will suffer irreparable loss and damage.

XVIII. That the damage which is thus threatened will far exceed two thousand dollars.

XIX. That they have at all times hereinbefore fully complied with and propose at all times hereafter to continue to comply with the requirements of the law of North Carolina bearing upon the conduct of their business, except as to the payment of the said illegal tax, and it has filed with John Robinson, the commissioner of agriculture, in the city of Raleigh, N. C., before making any shipment of fertilizers into the State, a true and faithful sample of its fertilizers, with a label truly setting forth the name, location, and trade-mark of the manufacturer and the chemical composition of the said fertilizer according to the law, and that every bag or package of such fertilizer that has been shipped into the State has a stamp or label setting forth the same, and that your orator proposes that all such bags or packages of such fertilizers as it shall hereafter ship into the State shall be accompanied with such

stamp or label; that it has purchased from the said commissioner of agriculture certain tags which he requires to be attached to each package of two hundred pounds of fertilizers, but it does not propose to attach the same to said packages hereafter until and unless this honorable court shall give judgment to the contrary.

XX. That the foregoing facts and conditions are sufficient to show the immediate, great, and irreparable loss and damage to which your orator is and will be subjected by the enforcement of the aforesaid illegal fertilizer-tax law and the public promulgation of the threat to execute the same by seizures and criminal prosecutions.

All of which actings, doings, and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof and inasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said defendants and each of them may, upon their several and respective oaths, full, true, direct, and perfect answer make to all and singular the matters hereinbefore charged and stated as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that the said defendants and each of them and their servants, agents, and attorneys be perpetually enjoined and restrained
17 from taking any steps whatever to enforce the said fertilizer-tax law against your orator or against any person purchasing for sale or use any of your orator's fertilizers and from making any seizures of your orator's fertilizers on account of the non-payment of the said tonnage tax, whether in the hands of your orator or its agents, servants, or customers or of the consumers thereof, and from instituting or causing or permitting to be instituted or prosecuting any criminal proceeding against your orator or its agents, servants, or customers on account of the non-payment by your orator or its agents of the tax aforesaid, and from instituting or causing or permitting to be instituted any prosecution or proceeding for any fine or penalties against your orator or its servants, agents, or customers for a failure to pay the aforesaid tax, and that they be enjoined from attempting by threats of seizure or prosecution or otherwise against your orator, its servants, agents, or customers, on account of the non-payment of the said tax, to interfere with your orator's trade, and that your orator may have such other and further relief in the premises as the nature of its case shall require and to your honors shall seem meet.

May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said defendants, thereby commanding them and every of them to be and appear before your honors in this honorable court and then and there to answer all and singular the premises and to stand to and perform and abide such order and decree

therein as to your honors shall seem meet; and your orator shall ever pray, &c.

(Signed) THOS. N. HILL,
JOHN W. HINSDALE,
Solicitors for Complainants.

18 STATE OF MARYLAND, }
City of Baltimore. }

George W. Grafflin, being duly sworn, says that he is the president of The Patapsco Guano Company, the complainant herein; that he has read the foregoing bill of complaint and is acquainted with the contents thereof; that the same is true to his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) GEORGE W. GRAFFLIN.

Subscribed and sworn before me this 4th day of April, 1892.

(Signed) JAS. W. CHEW,
[SEAL.] *Clerk Circuit Court U. S., District of Maryland.*

19 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties to and Contribute to the Expenses of this Suit,
against
THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. F. Green, R. W. Wharton, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, and J. Robinson, Commissioner of Agriculture.
} Restraining Order.

On the sworn bill of complaint in the above-entitled suit, a motion being made by complainant's counsel for a preliminary injunction against the defendants and sufficient reason appearing why the same should be granted—

It is hereby ordered that upon the complainant's filing with the clerk of this court an injunction bond in the usual form, justified in the sum of one thousand dollars with two good and sufficient sureties residing in Maryland or North Carolina, that the defendants, their servants, agents, and attorneys, be enjoined as prayed in said bill of complaint in this action, let the defendants show cause before me, at chambers, in Greensboro', N. C., on 7th day of May, 1892, at 10 o'clock a. m., why the foregoing order or some order to

be made of like purport and effect should not be continued in full force and until the final hearing.

(Signed) HUGH L. BOND,
C't Court Judge.

20 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties and Contribute to the Expenses of this Suit,
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} Injunction Bond.

Know all men by these presents that we, the Patapsco Guano Company and George W. Grafflin and William H. Grafflin, of the city of Baltimore, are held and firmly bound unto the Board of Agriculture of North Carolina and W. F. Green, W. R. Williams, R. W. Wharton, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, and John Robinson, commissioner of agriculture, in the sum of one thousand dollars; for which sum, well and truly to be paid, we bind ourselves, our executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals this 4th day of April, 1892.

Whereas the above-named Patapsco Guano Company has applied to his honor Hugh L. Bond, United States circuit judge, for an injunction restraining the obligees above named as prayed for in the bill of complaint in suit of the said Patapsco Guano Company against said obligees in the United States circuit court for the eastern district of North Carolina and the same has been granted until the further order of the court:

Now, the condition of this obligation is such that if the
21 above-bounden The Patapsco Guano Company shall well and truly pay to the said obligees, their executors, administrators, and assigns, all such damage as they may sustain by reason of the injunction if the court shall finally decide that the plaintiff is not entitled thereto, then this obligation to be void; otherwise to remain in full force and effect.

THE PATAPSCO GUANO COMPANY,
By G. W. GRAFFLIN, *Pres'd't.*
GEO. W. GRAFFLIN. [SEAL.]
WM. H. GRAFFLIN. [SEAL.]

Witness:
ARTHUR L. SPAMER.

STATE OF MARYLAND, }
City of Baltimore. }

Geo. W. Grafflin and Wm. H. Grafflin, who executed the foregoing bond, respectively say that they are each worth two thousand dollars over and above their debts and liabilities and in excess of their homestead and personal property exemptions.

—— ——.
—— ——.

Subscribed and sworn before me this 4th day of April, 1892.

JAS. W. CHEW,
Clerk Circuit Court U. S., District of Maryland.

This bond is approved.

HUGH L. BOND, *C't Judge.*

22 UNITED STATES OF AMERICA, } *ss:*
Eastern District of North Carolina, }

Equity Subpœna.

Circuit Court at Raleigh, Fourth Circuit.

The United States of America to the Board of Agriculture of North Carolina and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, R. W. Wharton, and John Robinson, commissioner of agriculture, Greeting:

We command you and every of you that you appear before the judges of our circuit court of the United States of America for the eastern district of North Carolina, at the office of the clerk of said court, in the city of Raleigh, in said district, on the first Monday in the month of June next, to answer the bill of complaint of the Patapsco Guano Company in behalf, etc., a citizen and resident of the State of Maryland, filed in the clerk's office of said court, in said city of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the eastern district of North Carolina to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the 14th day of April, 1892, and in the 116th year of the Independence of the United States.

[SEAL.] N. J. RIDDICK, *Clerk.*

Issued the 14th day of April, 1892.

23 *Memorandum.*

The within-named defendants are notified that unless they enter their appearance in the clerk's office of said circuit court, at Raleigh

aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

N. J. RIDDICK, *Clerk.*

Marshall's Fees and Expenses.

For service on 11 defendants, each at $2.00, subp.	$22 00
Complaint, order, &c.	22 00
For travel	24 36
	$68 36

Paid by J. W. Hinsdale, att'y, &c., June 4th, 1892.
Returned and filed May 25th, 1892.

N. J. RIDDICK, *Clerk.*

24 *Marshall's Return.*

THE PATAPSCO GUANO CO.
vs.
THE BOARD OF AGRICULTURE OF N. C. } No. 163, E.

Bill of complaint, restraining order, and equity subp., U. S. circuit ct., Raleigh, N. C.

Received April 14th, 1892; executed same day by delivering to and leaving with John Robinson, commissioner of agriculture, true copies each of the bill of complaint, injunction, restraining order, and equity subpœna in this cause.

Also on April 20th, 1892, executed in same manner and form on W. F. Green, pres. board of agriculture, and on the following-named persons, as members of the board of agriculture, executed by delivering to and leaving with each a true copy of equity subpœna and the restraining order of court, viz:

W. F. Green, April 20th, 1892.
J. B. Coffield, April 19th, 1892.
W. R. Williams, April 20th, 1892.
R. W. Wharton, April 21st, 1892.
W. R. Capehart, April 22d, 1892.
J. F. Payne, May 7th, 1892.
A. Leazar, May 20th, 1892.
S. L. Patterson, May 20th, 1892.
W. E. Stevens, May 20th, 1892.

The other defendants in this case not to be found in this district.

J. B. HILL,
U. S. Marshall.

25 In the Circuit Court of the United States, 4th Circuit, Eastern District of North Carolina, at Raleigh. In Equity.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties and Contribute to the Expenses of this Action,

vs.

THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, R. W. Wharton, J. F. Payne, A. Leazer, S. L. Patterson, C. D. Smith, and John Robinson, Commissioner of Agriculture.

Answer.

Joint and several answer of all the defendants above named to the bill of complaint of The Patapsco Guano Company, complainant.

The defendants above named, reserving to themselves the right of exception to the said bill on account of its many defects and omissions, and especially for that the same doth not set forth facts sufficient to constitute a cause of action, for answer thereto or to so much thereof as the defendants are advised it is material and necessary to answer, say:

I. That they admit that the plaintiff is a corporation and is a citizen and resident of the State of Maryland.

26 II. That it is admitted that the complainant corporation has a capital reasonably sufficient to enable it to perform its business as a manufacturer of fertilizer-, but the defendant- has no knowledge or information sufficient to form a belief as to the capital invested by complainant in its said business, and if the averment is relied upon as essential by plaintiff defendant- asks that complainant be required to make strict proof thereof, and defendants deny that many millions of capital are invested and thousands of laborers and agents are employed in the manufacture of fertilizer- for sale in North Carolina.

III. That they admit that the complainant has been engaged in selling fertilizers in North Carolina, but the defendants have no knowledge or information sufficient to form a belief as to the exact extent thereof or the enormous profit claimed by complainant in the said business, and therefore asks that the complainant be required to make strict proof thereof. Defendants say that unless the complainant has heretofore been selling fertilizers in North Carolina without complying with the law his purchase- of the tags which show the tonnage tax demonstrate that the statement of its annual business is grossly exaggerated.

IV. Defendants admit that the season for the sale of fertilizers is, as alleged, in the spring, and say that it is now almost entirely past, and defendants admit that it is probable that the complainant has manufactured and desires to continue to manufacture a considerable quantity of fertilizers.

V. Defendants admit that complainant has shipped fertilizers into the State and desires to ship more.

VI. That defendants admit that the board of agriculture, through its regularly constituted officers, intends to obey the law of
27 its creation, and that while its officers have not threatened complainant, yet if complainant does not intend to follow the provisions of the law which the defendants are in duty bound to uphold they will take such course as is required under the laws of the State to perform their duty.

VII. That the defendants admit that the laws of North Carolina are substantially set forth in paragraph 7, but that for greater certainty they refer to the code of North Carolina and the acts amendatory thereof.

VIII. Defendants admit that taxes to the amount of $32,894 were collected in 1891 under the laws then in force, but they deny that the amount is a fixed sum, and aver that this amount was unusually large and cannot be collected again; that during the year 1892 the receipts have greatly fallen off, and the defendants cannot reasonably expect (upon a careful estimate and after nearly all collections are over) to collect more than $24,000 in all, and that this sum will not be more than is necessary to carry on the operations of the department of agriculture in its inspection of fertilizers, in the proper analyzation of the same, and in publishing the results of such analyses and in protecting the farmers and citizens of the State against imposition and loss on account of spurious fertilizers. They deny the other allegations of paragraph 8, except as hereinafter admitted.

IX. That the defendants deny that the board of agriculture "pretend" anything in relation to this tax. They aver that the tax varies in amount from year to year, and that it is impossible to estimate in advance the exact amount of revenue to accrue from it; that in order to be certain to raise enough revenue to have the various brands of fertilizers used in the State (which have increased in numbers fivefold since the license tax was established) properly analyzed and the inhabitants of the State protected against
28 fraud and against spurious and worthless articles intended to be palmed off on the farmers of the State as genuine fertilizers, it is essential to maintain a department or bureau, to have a sufficient executive and clerical force properly to conduct the business of the department, to have a staff of chemists to perform the work of analyzation at the time when it is needed, and to keep a number of inspectors in the field at considerable expense, to draw samples of the three hundred and fifty brands now used in the State, the number of such brands having increased and continuing to increase each year under the operation of the act of 1891. Defendants deny utterly that not more than one-fifth of the tax collected is necessary for the said purposes, but, on the contrary, aver that all of said tax is reasonably necessary for those purposes; they deny that any unnecessary employees are maintained, and they deny that any part of the funds received from fertilizers are applied

directly or indirectly to the support of the Agricultural and Mechanical college.

X. Defendants, respectfully protesting against the good faith of an allegation of the terms of an act as if in existence long after nearly all of the items stated therein have been expressly repealed, which repeal was known or by ordinary diligence could have been known to complainant, say that it is not true that defendants intend to pay or by law can pay the items mentioned in paragraph X. They do not devote the tax realized from fertilizers to an experiment station or farm, nor to keep up a geological museum, nor to print the productions of a State geologist, nor to publish a hand book, nor to employ emigration agents, nor to the N. C. Industrial Association, nor to the expenses of a State geologist, but the receipts of the tax on fertilizers are applied as follows:

29 Properly to inspect, analyze, and control fertilizers it is absolutely essential that the work be done promptly as well as accurately. It is essential that a sufficient force be kept in all portions of the department throughout the year to manage executive details as they arise, to receive money, and to fill orders for a million or more of tags each year. It is necessary to keep a force of inspectors travelling over the State for the purpose of drawing samples of such fertilizers as shall be brought to or made in the State, and to prevent the introduction and sale of spurious goods. To analyze the samples it is requisite that a force of chemists be constantly maintained. In order that the analyses shall be made known to purchasers it is a necessity that they should be promptly printed and distributed throughout the State. The number of brands is, as has been heretofore stated, constantly increasing, now amounting to three hundred and fifty, and defendants say that the entire amount received from the tax upon fertilizers, as near as the revenue can be calculated and depended upon as a certain quantity, will be required for the legitimate purposes of the department as above set forth. Defendants will, when thereto required, exhibit a full statement of their expenditures and receipts.

XI. That of the items mentioned in paragraph XI the item of seven thousand dollars was paid exclusively for analyses of fertilizers, the payment being made to the experiment station because of the fact that the experiment station and the agricultural department used the same laboratory and to some extent the same chemists, and in this way the work was done economically; the $2,065 paid to the A. & M. college was the repayment of a loan theretofore made to the department by the college. The amount paid for printing bulletins of the result of the work of the department was an important and necessary part of its work. The amount

30 paid to the World's fair was a loan made under the following circumstances: The receipts during the year 1891 were larger than usual and the department made a loan to the World's fair which, in case of a deficiency in its revenue, it will seek to have repaid. Since the reduction of revenue and the increase of the number of brands no such surplus is ever expected to occur again.

XII. That the defendants are advised that the laws imposing a

tonnage tax are not a regulation of commerce between the States and are not unconstitutional; that the tax is imposed for the purpose of paying the expense of an inspection and to protect the people of North Carolina.

XII*a*. That the defendants are advised that the law is not an impost or duty either in letter or in spirit.

XIII. That the defendants deny the allegations of paragraph XIII, and, with all deference, suggest that the methods adopted by the General Assembly to protect the State against unscrupulous manufacturers of fertilizers are matters for the legislation of a sovereign State, and for a single manufacturer of fertilizers to give his views of the necessity of a law or a criticism of its provisions is gratuitous.

XIV, XV, XVI, XVII, & XVIII. That the defendants deny the allegations of damages alleged in paragraphs XIV, XV, XVI, XVII, XVIII and say that the same are merely chimerical creations of plaintiff's imagination, and that the damages which exist in plaintiff's imagination will not exceed the amount of the tax imposed upon the fertilizers sold by it. Defendants deny that the damages alleged can exceed two thousand dollars.

XV*a* & XV*b*. That defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraphs XV*a* and XV*b* except that the railroad company has been requested by the department to obey the law.

XIX. That defendants admit that complainant is ready to comply with any law which does not provide for an inspec-
31 tion or analysis of fertilizers or the payment of any tax by the complainant to have the fertilizers made by it duly analyzed; and, further complaining, defendants say:

XX. That the defendant R. W. Wharton is not a member of the board of agriculture and is not a proper party to this action; that the defendant W. F. Green and the other persons named in the bill (except John Robinson, who is commissioner of agriculture) are members of the board of agriculture, which is a department and a part of the government of the State of North Carolina; that all the actings and doings of such defendants are the actings and doings of the board of agriculture and not the actings and doings of the defendants individually, and that they are not proper parties to this suit.

XXI. That the defendant The Board of Agriculture is a department of the government of the State of North Carolina and is protected by the rights and sovereignty of the State, and the defendants are advised that the circuit court of the United States has no jurisdiction to maintain an action against a department of the government of the State.

Wherefore defendants pray to be dismissed with costs, etc.

BATTLE & MORDECAI,
BUSBEE & BUSBEE,
Sol's for Defendant-.

UNITED STATES OF AMERICA,
Eastern District of North Carolina.

W. F. Green, chairman of the board of agriculture of North Carolina, and John Robinson, commissioner of agriculture, defendants, being duly sworn, say, each for himself, that the facts stated in the foregoing answer to be of their own knowledge true, and those otherwise stated they believe to be true.

W. F. GREEN.
JNO. ROBINSON.

Sworn to and subscribed before me this June 4th, 1892.

N. J. RIDDICK, *Clerk.*

As to Wm. F. Green and by John Robinson, June 6th, 1892.

N. J. RIDDICK, *Clerk.*

32 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Others, &c., *against* THE BOARD OF AGRICULTURE OF NORTH CAROLINA *et al.* — Replication of the Plaintiffs.

This repliant-, saving and reserving unto *itself* all and all manner of advantage of exception to the manifold *un*sufficiencies of the defendants' answer, for replication thereunto says that *it* will aver and prove *its* said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is uncertain and insufficient to be replied unto by *this* repliant-; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things *this* repliant- *is* and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by *its* said bill *it* had already prayed.

T. N. HILL,
J. W. HINSDALE,
Solicitors for Plaintiffs.

Replication filed June 11th, 1892.

N. J. RIDDICK, *Clerk,*
By V. ROYSTER, *Dep. Cl'k.*

33 U. S. Circuit Court, Eastern District N. C., June Term, 1892.

Decided Sept., 1892.

THE PATAPSCO GUANO CO.
vs.
THE BOARD OF AGRICULTURE OF NORTH CAROLINA. } Opinion.

SEYMOUR, *J.:*

This court, in the case of Am. Fertilizer Co. *v.* Board of Agriculture, reported in 43 Fed. Reporter, 609, decides so much of section 2190 of the Code of North Carolina as imposed a privilege tax of five hundred dollars per annum on every manufacturer or other person importing any commercial fertilizer into the State for each separate brand or quality to be unconstitutional. The ensuing legislature repealed this section and modified the entire legislation upon the subject of commercial fertilizers. This legislation is to be found in chapters 9 and 348 of the Public Laws of 1891. Chapter 9, quoted in part, reads as follows:

"SEC. 1. That section 2190 of the Code shall be substituted by the following: 'For the purpose of defraying the expenses connected with the inspection of fertilizers and fertilizing materials in this State there shall be a charge of twenty-five cents per ton on such fertilizers and fertilizing material for each fiscal year, which shall be paid before delivery to agents, dealers, or consumers in this State. * * * Each barrel, bag, or other package * * * shall have attached thereto a tag stating that all charges specified in this section have been paid. * * * Any person, corporation, or company who shall sell or offer for sale any such fertilizers contrary to the provisions above set forth shall be guilty of a misdemeanor.'" * * *

34 SEC. 2. Section 2191 of the Code shall be substituted by the following: "Every bag, barrel, or other package of such fertilizers * * * offered for sale in this State shall have thereon plainly printed a label or stamp, a copy of which shall be filed with the commissioner of agriculture, together with a true and faithful sample of the fertilizers * * * which it is proposed to sell, at or before the delivery to agents, dealers, or consumers in this State; * * * also the chemical composition of the contents of each package, * * * together with the date of its analyzation, and that the requirements of the law have been complied with." * * *

SEC. 4. Section 2193 of the Code shall be substituted by the following: "Any merchant, etc., who shall sell or offer for sale any commercial fertilizers without such label * * * shall be liable to a fine of ten dollars. * * * Any agent of any railroad * * * who shall deliver any fertilizers in violation of this section shall be guilty of a misdemeanor."

Section 348 of the Public Laws of 1891 amends the previous legislation of the State in regard to the establishment and maintenance of an industrial school.

By the act of 1885, chapter 308, sec. 4, it was enacted that the board of agriculture should apply to the establishment and main-

tenance of an industrial school such part of their funds as was not required to conduct the regular work of the department, not to exceed $5,000 annually.

Chapter 410 of the Public Laws of 1887, section 6, provided that the board of agriculture should turn over to such industrial school annually the whole residue of their funds from licenses on fertilizers remaining over and not required to conduct the regular work of the department.

By chapter 348 of the Public Laws of 1891 the provision
35 of section 6 of chapter 410 of the Public Laws of 1887, above cited, is stricken out and the following provision is substituted in lieu thereof:

"The said board of trustees"—referring to the trustees of the N. C. College of Agriculture and Mechanic Arts, which takes the place of the industrial school created by the act of 1885—"shall have power to accept, on behalf of the State, donations of property, real or personal, and any appropriations made by Congress * * * for the benefit of agricultural experiment stations or agricultural & mechanical colleges."

Section 5 of this act appropriates $10,000 annually for the years 1891 and 1892 to such college of agriculture and mechanic arts.

The act of 1891 leaves in force section 2196 of the Code, which provides that the chemist of the agricultural degartment shall be paid out of the funds of the department of agriculture; section 2198 of the Code, which imposes certain duties upon the State geologist and authorizes the State board of agriculture to pay for the expenses of the same, and section 2206 of the Code, which appropriates $500 annually of the money received from the tax on fertilizers to the N. C. Industrial Association, to be expended under the direction of the board of agriculture.

By section 2208 of the Code it is provided that all moneys arising from the tax on licenses and from various other sources specified shall be paid into the State treasury and shall be kept in a separate account by the treasurer as a fund for the department of agriculture. The ordinary repealing clauses are annexed to the two acts hereinabove cited from the laws of 1891.

Although, as has been said, chapter 348 of the Laws of 1891
36 does not repeal section 2206 of the Code—the section appropriating $500 annually of the moneys received from the tax on fertilizers—yet a later act refers to the subject of an appropriation to said association. This is chapter 426 of the Laws of 1891, which provides that an appropriation of $500 be made to the treasurer of said association, to be paid by the State treasurer. This act refers — no particular fund as the source from which such payment shall be derived.

The constitutional objection to this legislation is that it is, it is claimed, a regulation of commerce. The answer of the State's counsel in sustaining the tax is that it is an inspection law. The reply made to this answer by counsel for plaintiff is, first, that it appears from the whole scope of the legislation that the imposition in question is not intended in good faith to be a compensation to

the State for the cost of inspecting commercial fertilizers; that this appears from the alleged fact that the amount is in excess of what would be necessary to pay such cost, and the court is asked, if it be in doubt as to whether this be true, to direct an investigation of the question of what would be the necessary cost of the inspection of commercial fertilizers under the act of 1891, and whether the imposition of a charge of twenty-five cents per ton be not in excess of what is absolutely necessary to the enforcement of the law.

Counsel further contend that the law cannot be an inspection law, because it is directed to the subject of articles not the products of the State enacting the regulation; and, further, if not technically an inspection law, that it cannot be upheld on the analagous ground of being a police regulation in the nature of an inspection law, because the police power of the State is confined to the protec-
37 tion of public health, the public morals, or the public safety.

I will consider these contentions in the order above given:

I. I concur with counsel for plaintiff that if the imposition of twenty-five cents on each ton of commercial fertilizer be not either an inspection impost or cannot be supported on some analagous ground it must fail as being a tax on interstate commerce. The general taxing power of a State extends only to property within its geographical limits or owned as the personalty of its residents. A reading of the law now under discussion may leave it questionable whether, as far as it affects or intends to affect fertilizers manufactured outside of North Carolina by citizens and residents of other States, the imposition considered as a tax is not payable before the property taxed comes within the jurisdiction of the State. Under any construction of the statute it is chargeable upon the merchandise before it becomes mingled with the general mass of personalty in the State. Possibly, in the view taken of the subject in the New Orleans coal case, Brown *v.* Houston, 114 U. S., 622, this might not be fatal were the imposition a part of a law taxing at equal rates all taxable, but it is too clear, it would seem, to require any citation of authority that, considered as a specific burden upon a particular article imported from another State, the fertilizers cannot be subjects of State taxation until they are mingled with the general mass of the goods within the State's limits. By section 1 of the first cited act of 1891 it is provided that the tax shall be paid before delivery to agents, dealers, or consumers in the State; and in various parts of the act it is made penal for any one, including a common carrier, to deliver any fertilizer not bearing upon it, in the shape of a tag, evidence that the tax is paid.

II. The opinion of the court being that the imposition
38 cannot be sustained as a tax on merchandise, I pass to the question of whether it can be supported as an inspection law or on any other ground as a law regulating the internal commerce of the State.

"Inspection laws are not, strictly speaking," says Chancellor Kent, "regulations of commerce. Their object is to improve the quality of articles produced by the labor of the country and to fit them for exportation or domestic use. These laws act upon the sub-

ject before it becomes an article of commerce. Inspection laws, quarantine laws, and health laws, as well as laws regulating the internal commerce of a State, are component parts of the immense mass of residuary State legislation over which Congress has no direct power, though it may be controlled when it directly interferes with their acknowledged powers." 1 Kent's Commentaries, *439.

The act imposing a tax of five hundred dollars per annum for each separate brand of fertilizer (the Code, sec. 2190) is imposed as a privilege tax. Amended section 2190, Laws of 1891, ch. 9, in terms imposes not a tax, but "a charge" of 25 cents per ton on fertilizers "for the purpose of defraying the expenses connected with the inspection of fertilizers." It is thus expressly imposed as an inspection tax. The strong presumption is that the declared purpose of the draughter of the statute is its real purpose, and no court will lightly assume the contrary. In fact, a doubt is expressed by high authority of the power of the United States courts to pass upon the subject of whether the imposition is too large for the necessary expenses of inspection. In Neilson *v.* Garza, 2 Woods, 287, Mr. Justice Bradley says that it may be doubtful whether it is not exclusively the province of Congress and not at all that of a court to decide whether a charge or duty under an inspection law is or is not excessive. Mr. Justice Blatchford, in citing Neilson *v.* Garza,
39 adds that there was nothing in the record from which it could be inferred that the State of Maryland intended to make its tobacco-inspection laws a mere cover for laying revenue on exports. Turner *v.* Maryland, 107 U. S.

A distinction is readily to be deduced from authority on the subject of inspection and kindred laws between the question of whether the courts of the United States will pass upon the alleged excessive charge imposed by law, and that of the consideration of whether a State legislature, or perhaps it were better or more correct to say the framer of a State statute, has intended under the guise of a pretended charge for the expense of inspection to impose a tax on imports or exports or commerce between the States or any subjects not properly liable to State taxation. I think that in cases of this character the court is not required to go into an examination of the question of whether the imposition is excessive unless for the purpose of deciding whether the tax is only colorable an inspection charge or a charge of a kindred nature.

The case in the Supreme Court of Onachita Packet Co. *v.* Aiken, 121 U. S., 444, illustrates the subject. The syllabus is, "A municipal tax which authorizes the collection of a wharfage rate to be measured by tonnage estimated to be sufficient to light the wharves, keep them in repairs, and construct new wharves as required, and which may realize a profit over expenses, does not violate the Constitution as being a duty or burden upon commerce." The Supreme Court, expressing its opinion by Bradley, J., says: "We see nothing in the purposes for which the lessees were required to expend or pay money at all foreign to the general object of keeping up and maintaining proper wharves and providing for the security of those that use them." "In all such cases of local concern, though incidentally

affecting commerce, we have held that the courts of the U. S. cannot as such interfere with the regulations made by the State nor sit in judgment on the charges imposed for the services rendered under State authority. It is for Congress alone, under its power to
40 regulate commerce with foreign nations and among the several States, to correct any abuses that may arise or to assume to itself the regulation of the subject. If in any case of this character the courts of the United States can interfere in advance of congressional legislation it is where there is a manifest purpose by roundabout means to invade the domain of Federal authority." Turner *v.* Maryland, *supra*, is a case of the former class. Brimmer *v.* Rebman, 138 U. S., 78, and Minnesota *v.* Barber, 136 U. S., 313, are cases where the United States courts interfered with the State statute on the ground of manifest purpose to invade the domain of Federal authority.

It remains to be considered whether the tonnage tax of 25 cents on commercial fertilizers manifests an evident intent, under the guise of an inspection law, to impose taxation on interstate commerce.

The fact, were it true, that the amount of the tax might upon investigation turn out to exceed the sum required to reimburse the State for the cost of inspection would not, in the view the court takes of the principles of law involved, be at all decisive. The question would perhaps be somewhat analagous to the inadequacy in the consideration in a contract of sale, which might be evidence of fraud, but not conclusive of it unless sufficiently great to at once "shock the conscience."

The verified answer of the board states that the amount collected in 1891 under the existing law was $32,894.00; that $24,000 is all that has been or can be collected during the year 1892. It further states that the number of brands to be analyzed is three hundred and fifty. If such be the case the amount of the tax under the old law as it existed before 1891 on fertilizer, at the rate of $500 per brand, would have been $175,000.00. Doubtless the re-
41 duction in the amount of the tax has been the cause of the introduction into the State of some brands of fertilizer which would not have paid the tax of 1890.

Of course it would have been impossible, in advance of actual results, to have determined the precise imposition which would have covered the cost of inspection. The case has been heard upon bill and answer and certain proofs.

The tax of 25c. per ton on fertilizers resulted in 1891 in producing about $33,000. The estimate, which seems a reasonable one to me, for 1892 is that it will pay $24,000. It is in the account produced, mingled with other receipts of the department of agriculture. There is no provision in the N. C. statute for keeping separate accounts of the cost of the work done under the fertilizer law and under other branches of the duties of the department of agriculture. The entire expenses (actual, $14,022.47) (estimated, about $3,300) of the department of agriculture for the six months

(Dec. 1st, 1891, to May 31st, 1892) are $17,352.97. These charges include—

Board and committee meetings	$1,452 60
Inspectors' expenses	2,398 18
Gas and water	1 75
Paper, printing, bulletins, & other office work	1,435 53
Salaries and wages	2,175 00
Att'ys' fees	534 00
Subscriptions to periodicals	39 00
Analytical	5,000 00
Postage, express, freight, &c. (estimated)	985 00
Gas, water	40 00
Paper, printing, &c	90 00
Att'ys' fees	200 00
Analytical	3,000 00
Total	$17,352 00

Some of these charges cannot properly be, as a whole, charged to the inspection of fertilizers. How many of them can it is impossible to say. I should suppose that on the whole the tax on the fertilizer will produce enough to pay the inspection charges, with a considerable margin. It is upon such a supposition that I pronounce my opinion. If I were to hold that the charge upon fertilizers would be unconstitutional if it could be shown to produce more than enough to pay inspection charges, I would be compelled either to decide against the State at this stage of the case or to direct an enquiry with a view to ascertaining the exact amount produced by the tax and the exact amount of the costs of the department properly chargeable to inspection. Upon the coming in of the report some such questions as these would arise: Does the charge of $8,000 for analysis in whole or in part belong to inspection? It is averred by the answer that it does. What part of the general expense of the board of agriculture ought the board to charge for inspection? In fact, the court would be compelled to supervise the entire subject of the expenditures of the board. This would be, for many reasons, inconvenient, and, as I think, could produce no good result.

The amount of the inspection tax appears a reasonable one, not excessive of itself, so as to make it probable that it would check importation. Putting the case, as I do, upon the position that
42 the imposition could not be decided unconstitutional by the circuit court simply upon the ground of alleged excess, if the excess does not show a purpose to evade an inhibition of the constitution, I have come to the conclusion that I cannot say that such intention appears in the amount of the tax.

I will proceed to give the facts of a case which sustains fully the principal on which this decision is based. It is the leading one in the reports of the United States on the subject of inspection laws—that of Turner *v.* Maryland, 107 U. S., 38, which involved the constitutionality of the Maryland inspection laws. The act of the

legislature of Maryland of 1864 provided for the appointment of five tobacco inspectors and a number of clerks, whose salaries were to be paid from the receipts of their respective offices. These inspectors were to cause each hogshead of tobacco to be numbered and to enter the number, time of receipt, etc., the name of the owner or consignee, etc., to be entered in a book to be kept by each of them. It was further provided that the tobacco in each hogshead should be inspected; that each hogshead, with the tobacco it contained, should be separately weighed, and that each hogshead should be branded with the weight of the tobacco and of the hogshead. Provision was made for taking samples from each hogshead, for sealing and delivering to owners certificates of inspection of all merchantable tobacco and for repacking and reweighing unmerchantable tobacco. It was made unlawful to take out of the State any uninspected tobacco in hogsheads. An amendatory act was passed in 1870 which allowed any grower or purchaser of tobacco to pack the same in counties where grown without having it open- for inspection. However, by the amendatory act it was provided that such tobacco, whether or not opened for inspection, could only be
43 packed in casks of a specified size and should be liable to the full charge for outage and storage. By an act of 1872 such charge was fixed at $2.00 for a hogshead of 1,100 pounds. No inspection of the quality of the tobacco was required, but it was the duty of the grower or packer to have his tobacco delivered, packed by him, at some one of the State's tobacco warehouses, that the inspectors might ascertain whether it was packed in hogsheads of the proper dimensions and whether it had been packed in the neighborhood and where it was grown and marked as required by statute, and for this service and no other the owner of such tobacco was required to pay a charge of two dollars for every hogshead. No further duty was required of a tobacco inspector than to keep a record of the facts of each case and to weigh the tobacco and brand the weight on each hogshead. A question passed upon by the Supreme Court in this case was the validity of the law as an inspection law, in view of the fact that the plaintiff contended that the amount of the charge for such inspection was excessive.

The decision of the court was in favor of the constitutionality of the law. What I have already said disposes of the contention of plaintiff that contingently there ought to be a further enquiry in this case.

But it is contended by the plaintiff that the law under consideration in this case shows upon its face by various provisions made for the expenditure of the money collected under the law that the intention of the legislature was to collect a sum more than sufficient to pay the expenses of inspection. An ingenious argument was made by Mr. Hill, the purpose of which was to show that certain provisions of law which had the effect of repealing appropriations made from the funds derived from the original fertilizer tax had the effect of reviving certain previous appropriations of money derived from the proceeds of such fertilizer tax. I
44 am not disposed to deny the truth of the general proposition

that the repeal of a repealing law does in the absence of any special circumstances revive the law repealed. This proposition is laid down in Dwarris on Statutes, page 676. In Ramseur, executor, *v.* Thompson, 65 N. C., 628, Pearson, chief justice, says: "The act of 1870–'71 repeals the code of civil proceedure in regard to costs and makes no provision for costs in the matter now under consideration, so the effect is to restore the revised code in that particular." But the question is one of the intention of the legislature. In the case before the court the legislature of North Carolina had by the law of 1885 made an appropriation to the industrial school of $5,000 annually. By an act of assembly passed in 1887, which must be construed to be substituted for the act of 1885 and therefore to be a repealing law, the legislature of North Carolina appropriated to such school all the surplus arising from the proceeds of the tax on fertilizers. In 1891 an act of the legislature was passed the effect of which, it is conceded, was to repeal the appropriation made to the State industrial school by the act of 1887. It is contended by Mr. Hill, for the plaintiff, that the repeal in 1891 of the act of 1887 revived the act of 1885, and that it results from the revival that $5,000 of the fund arising from the present tax on fertilizers is now appropriated to the state industrial School. The same argument is used to show that by existing legislation $500 of the proceeds of the tonnage tax on fertilizers is annually appropriated to the N. C. Industrial Association, which is, as the court is informed, a negro agricultural fair. The argument drawn from this contention is that the State today appropriates at least $5,500 annually of the money derived from the tonnage tax to purposes other than the cost of inspection of fertilizers, and that this fact proves that
45 the amount of the tonnage tax was intentionally made larger than was necessary. The court is of the opinion that such was not the intention of the legislature. This court at its June term, 1890, decided that the then existing tax upon commercial fertilizers was unconstitutional and had given as a reason for one of its positions, to wit, that the then existing tax on fertilizers could not be supported on the ground of its being an inspection tax, the fact that a large portion of the proceeds of such tax was appropriated for other than inspection purposes. At the ensuing session of the legislature of N. C., in January, 1891, an act was passed which has been hereinbefore recited and which in express terms repeals all laws conflicting with itself. By the first section of this act, which imposes a tax of 25 cents per ton on all commercial fertilizers, the legislature declares the purpose of the tax to be for inspection only. The previous law had imposed a tax of $500 per brand upon every brand and description of fertilizer and declared the same to be a privilege tax. The tonnage tax of 25c. per ton is declared by the first section of the act of 1891 to be substituted for the $500 privilege tax. This court will not infer, simply for the purpose of enforcing an ancient rule of law having for its basis only the presumed intention of legislatures, that the purpose declared in the act of 1891 is falsely declared and by an implication which contradicts the declared will of the legislature that the re-

peal of the sections of the code which have been declared unconstitutional should have only the effect of reviving earlier laws equally objectionable with those that were attempted to be repealed. The court is of the opinion that under existing legislation there is no appropriation of the proceeds of the tonnage tax directly to the support of the industrial school, now called the State A. & M. college or the N. C. Industrial Association. If it should be other-
46 wise, however, it was not intended, and therefore does not affect the case. Certain appropriations are made in unrepealed sections of the Code of North Carolina from the funds of the State board of agriculture for various purposes, such as that under section 2196, for the salary of an analyst; under section 2198, to a geological museum, and under some other sections to various other purposes; but these appropriations are to be paid out of the general funds of the State board of agriculture, which are derived from other sources, as well as from the tonnage tax on fertilizers, and are not directly appropriated out of the tonnage tax. In lieu of the appropriation of the surplus funds derived from the tax on fertilizers, given by the act of 1887 to the State agricultural college, an annual sum of $10,000 is directed to be paid out of the treasury of the State to such college, and in lieu of the $500 directed to be paid out of the fertilizer tax to the N. C. Industrial Association an annual appropriation of $500 from the public treasury is made to the same.

Chapter 338 of the Laws of 1891 makes a provision for the oyster industries of the State from other sources than the fertilizer tax; chapter 417 of the Laws of 1891 makes an appropriation of $10,000 direct from the treasury to the State geological survey; so that it is evident that the legislature of 1891 repealed all laws making any substantial diversion of the money to be derived from the tonnage tax on fertilizers to any other purpose than to such as are directly or indirectly connected with the expense of inspection, leaving the real question for the court only whether the tax of 25c. per ton appears in itself so excessive as to indicate a purpose other than that declared on the face of the law. Upon this question the court
47 has already declared its opinion.

III. But one question remains to be discussed. In the collection of inspection laws given in the note to the case of Turner *v.* Maryland no statute is mentioned which under the guise of an inspection law imposes an inspection tax upon things not grown in or produced in the State exacting the inspection law, and there is as yet no decision of the supreme court approving of the validity of any law imposing a charge for the inspection of articles grown or produced outside of the State. In the very recent case of Voight *v.* Wright, 141 U. S., 62, Bradley, judge, in rendering the opinion of the court, says: "The question is still open as to the mode and extent in which State inspection laws can constitutionally be applied to personal property imported from abroad or from another State." This question was not decided in Voight *v.* Wright, which was a case arising under the Virginia act of 1867, providing for the inspection of flour brought into the State and offered for sale therein,

and which went off on the ground that the Virginia law in question discriminated in favor of Virginia-made flour and against flour manufactured in other States. The point must necessarily be discussed in the decision of this case.

I do not think it necessary to expressly state that this law is technically an inspection law, though I see no reason why it should not be so called. Whatever called, it seems to me to be a law that the State of North Carolina has the power to enact under the general powers reserved from the grant of other powers to the United States. It is not worth while to discuss the question of whether it is one of the police powers of the State. It is a law to provide for the security of purchasers in buying an article whose contents
48 and qualities cannot be determined by an ordinary inspection, but only by analysis and the use of the knowledge of experts. It would seem that there can be no reason why in the absence of any constitutional objection a State should not have power in the regulation of its internal commerce to say that articles of this description shall not be sold within its limits without inspection. It is a law enacted to protect the citizens of the State from fraud. Neither do I know of any reason why the State should not be permitted to charge the cost of such inspection upon those offering such articles for sale.

The judgment of the court is that the injunction heretofore granted be dissolved, the bill dismissed, and that the defendant have judgment for costs against the plaintiff and its surety on the prosecution bond.

49 In the Circuit Court of the United States at Raleigh, Fourth Circuit. In Equity. November Term, 1892.

THE PATAPSCO GUANO CO. *et al.*
v.
THE BOARD OF AGRICULTURE OF NORTH CAROLINA *et al.*

No. 163. Order Dissolving Injunction.

This cause coming on for argument upon the plaintiff's motion to continue the temporary restraining order heretofore granted herein until the hearing, and said motion being heard upon bill, answer, affidavits, and exhibits, and being argued by counsel on both sides—

The court, for the reasons set forth in the opinion filed herein, doth deny the plaintiff's motion and doth order that the injunction heretofore granted in this cause stand dissolved and vacated at the costs of the plaintiff.

A. S. SEYMOUR, *Dist. Judge.*

F. H. BUSBEE AND
BATTLE & MORDECAI,
Sol's for Def'ts.

50 *Depositions for Plaintiff.*

UNITED STATES OF AMERICA, }
Eastern District of North Carolina. }

Circuit Court, Fourth Circuit, at Raleigh.

The President of the United States of America to Weldon T. Smith, Greeting:

We, reposing especial trust and confidence in your integrity, do authorize and empower you to cause S. McD. Tate, H. E. Cowan, E. B. Bain, E. B. Barbee, C. G. Latta, John Robinson, H. B. Battle, P. C. Ennis, T. C. Harris, W. F. Massey, Alex. Q. Holliday, R. L. Burkhead, J. J. Thomas, —— Brewer, and others to appear before you at such time and place as you may appoint, and them on oath to examine touching all such matters and things as they shall know of and concerning a certain matter of controversy pending in our circuit court of the United States for the eastern district of North Carolina, wherein The Patapsco Guano Company *et als.* are plaintiffs and The Board of Agriculture of North Carolina and others are defendants, and their depositions in writing, by you so taken, the same to transmit, sealed with your seal, to the judges of our said circuit court of the United States, to be held for the eastern district of North Carolina, at Raleigh, on the first Monday in June next, to be read in evidence in behalf of the complainants in said controversy.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the 17th day of May, 1893, and in the 117th year of the Independence of the United States.

[SEAL.] N. J. RIDDICK, *Clerk.*

51 UNITED STATES OF AMERICA, }
Eastern District of North Carolina. }

To the marshal of the eastern district of North Carolina:

Whereas the subscriber has received a commission from the United States circuit court to him directed for the examination of John Robinson, H. B. Battle, P. C. Ennis, T. C. Harris, W. F. Massey, Alex. Q. Holladay, R. L. Burkhead, J. J. Thomas, and S. W. Brewer as witnesses in a case in said court pending between The Patapsco Guano Co., plaintiff, and The Board of Agriculture, defendant, you are therefore commanded to summon the said John Robinson, H. B. Battle, P. C. Ennis, T. C. Harris, W. F. Massey, Alex. Q. Holliday, R. L. Burkhead, J. J. Thomas, and S. W. Brewer personally to be and appear before me, the said commissioner, at the office of John M. Robinson, commissioner of agriculture, on Friday, the 26th day of May, 1893, at 9.30 o'clock a. m., then and there to testify and the truth to say in behalf of the plaintiff in said controversy.

Herein fail not and have you then and there this writ.
Witness W. T. Smith, commissioner, this 18th day of May, 1893.

W. T. SMITH,
Commissioner.

We accept service of the within notice.

R. L. BURKHEAD.
P. C. ENNIS.
J. J. THOMAS.
S. W. BREWER.
W. F. MASSEY.
ALEX. Q. HOLLADAY.
E. B. BARBEE.
JNO. ROBINSON.

Executed May 25th, 1893, on Dr. H. B. Battle and T. C. Harris; the others named hereon have accepted service.

J. B. HILL, *U. S. M.*

Marshal's fee, $1.10.
Due.

52 UNITED STATES OF AMERICA,
Eastern District of North Carolina.

To the marshal of the eastern district of North Carolina:

Whereas the subscriber has received a commission from the United States circuit court to him directed for the examination of S. McD. Tate, H. M. Cowan, E. B. Bain, E. B. Barbee, and C. G. Latta as witnesses in a case in said court pending between The Patapsco Guano Company, plaintiff, and The Board of Agriculture, defendant, you are therefore commanded to summon S. McD. Tate, H. M. Cowan, E. B. Bain, E. B. Barbee, and C. G. Latta personally to be and appear before me, the said commissioner, at the office of S. McD. Tate, State treasurer, on Thursday, the 25th day of May, 1893, at 9.30 o'clock a. m., then and there to testify and the truth to say in behalf of the plaintiff in said controversy.

Herein fail not and have you then and there this writ.
Witness W. T. Smith, commissioner, this 18th day of May, 1893.

W. T. SMITH,
Commissioner.

53 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina.

THE PATAPSCO GUANO COMPANY *et als.*
vs.
BOARD OF AGRICULTURE OF NORTH CAROLINA *et als.*

Pursuant to the annexed commission to me directed, I, W. T. Smith, commissioner, under the authority hereof, on the 25th day of May and the 26th and 27th days of May, 1893, at the office of the State treasurer of North Carolina on the 25th day of May, and

on the 26th and 27th days of May at the office of John Robinson, commissioner of agriculture of North Carolina, in the city of Raleigh, county of Wake, State of North Carolina, both parties being present by their counsel, to wit, The Patapsco Guano Company, by John W. Hinsdale, att'y, and The Board of Agriculture of N. C. by S. F. Mordecai, proceeded to take the depositions of Henry M. Cowan, R. L. Burkhead, Jno. Robinson, H. B. Battle, T. C. Harris, S. W. Brewer, and E. B. Barbee, who, each being duly sworn to speak the truth, the whole truth, and nothing but the truth between the parties named in the said commission, deposed and say as follows:

54 COWAN, HENRY M., one of the witnesses sworn on behalf of the complainant, deposed as follows:

Direct examination by Col. J. W. HINSDALE:

Q. In the first place, sir, what is your name and occupation?

A. Henry M. Cowan, chief clerk; chief clerk North Carolina treasury department, Raleigh.

Q. What is this book marked "Exhibit A," which I hand to you?

A. This is the biennial report of the treasurer of North Carolina for the two fiscal years ending November 30th, 1892.

(Defendant's counsel objects to the admission of Exhibit A.)

By the JUDGE: Testimony admitted.

Q. Will you please turn to the statement of public fund receipts for the two fiscal years ending November 30th, 1891, and November 30th, 1892, and state the amount of tonnage tax on fertilizers received by the State treasurer for each month of the fiscal year 1890–'91?

A. January, 1891, tonnage tax on fertilizers, $2,238.75.

Mr. Cowan proceeded as follows:

The tonnage tax on fertilizers was for—

February, 1891	$11,969 09
March	6,758 44
April	6,185 55
May	2,960 78
June	160 75
July	14 60
August (nothing in Aug. this year).	
September	1,251 50
October	1,433 50

The above is for the fiscal year 1891.

For the fiscal year 1892:

55

December, 1891	$591 12
January, 1892	2,755 25
February	6,709 60
March	6,392 93
April	5,158 23

May	1,453 50
June (nothing).	
July	3 75
August	285 00
September	777 50
October	1,769 00
November (D. W. Bain, St. tr.)	70 00
November (S. McD. Tate, St. tr.)	78 65

Will you please turn to the account upon the treasurer's book and state the aggregate for each of these years as appears upon that book?

A. $32,972.96 for the fiscal year ending November 30th, 1891; $26,044.53 for the fiscal year ending November 30th, 1892.

Q. Please state the receipts from tonnage tax for the several months of the current fiscal year as they appear upon the treasurer's books.

(Objected to by complainant.)

Dec., 1892	$1,236 75
January, 1893	4,597 50
February	8,806 01
March	1,805 99
April	6,364 75

Q. Please state how the account in the treasurer's book from which you have been reading for the fiscal years 1890–'91 and 1892–'93 is headed.

A. This account for 1891–'2 and 1892–'3 is headed "Tonnage tax on fertilizer."

56 Q. Please turn to the book. How is that account which commences with the entry "January, by State treasurer, $2,238.75," headed?

A. "Tonnage tax on fertilizer."

Q. In the printed statement, "Exhibit A," are not each of those amounts which you have testified entered upon the account as tonnage tax on fertilizers?

A. They are.

Q. Will you please turn to the stub of the receipt book for the first item of $2,238.75 and read what appears on that stub, so that it may be taken down?

—. The first stub reads as follows: "Date, Jan. 31st, 1892; amount, $2,238.75; receipt issued to John Robinson, commissioner of agriculture, tonnage charges on fertilizers and fertilizing material paid into his office by sundry persons under act ratified the 21st day of January, 1891, entitled 'An act to amend chapter 1, volume II, of the Code relating to agriculture and geology.'"

Q. I will ask you, sir, if the stubs for the receipts given for each and every other amount which you have testified do not read in the same way?

A. They do. We issued on this receipt book in conformity to the law.

Q. Can you state from your books what amount was paid in by Col. Robinson, commissioner of agriculture, for the month of December, 1890?

57 A. Nothing.

Q. Can you tell from the treasurer's books what sum was paid in for the month of November, 1890?

A. Nothing for November, 1890.

—. What for October, 1890?

A. Nothing.

Q. September?

A. Nothing.

Q. Will you please, sir, give the receipts for the several months of the year 1890, going backwards?

(Objected to by defendant for the reason that all of this is license tax.)

By the JUDGE: Admit.

A.—

August	Nothing.
July	Nothing.
June	Nothing.
May	Nothing.
April, 1890	$1,500
March, 1890	7,500
February	10,500
January, 1890	12,000
December, 1889	500

These for the fiscal year 1889–'90.

Q. Will you please turn to the day book and give me the receipts tonnage tax for the month of May, 1893?

(Objected to by defendant.)

By the JUDGE: Testimony admitted.

A.—

May	1st	$150 25
	4th	282 25
	8th	279 25
	13th	183 75
	22nd	97 50

Q. What amount of money has been paid into the hands of the State treasurer on account of the agricultural department from the U. S. Gov't for the fiscal year 1890–'91—that is to say, from November 30th, 1890, to November 30th, 1891?

58 A. That does not appear on the State treasurer's books.

Q. Where does that appear?

A. I suppose on the *ex officio* treasurer's books. I do not keep them and I am not familiar with them at all. Mr. Burkhead has that part of the business altogether.

Q. Mr. Cowan, look at this, please (Col. Hinsdale here held towards Mr. Cowan a book), and tell me what book this is.

A. It appears to be from the writing on the back the agricultural department book. It has on the back "treasurer North Carolina agricultural department."

Q. On page 380 what do you find?

A. I see "experiment station, department of agriculture."

Q. Have you any doubt about what this book is? You have seen it before?

A. I never to my recollection wrote a line in that book. Yes, sir; I have seen all of them.

Q. You know what book this is?

A. It is the record book of the agricultural department, I suppose.

Q. Have you any doubt about that?

A. That is what it appears to be, sir. It is the book of the treasurer *ex officio* of the agricultural department. I have no connection with that department. The treasurer *ex officio* and the State treasurer, while they are the same, are entirely different personages. The State treasurer acts in the capacity of *ex officio* treasurer of that institution.

By Counsel for Defendants:

Q. Are you employed at all by the treasurer of the agricultural department, *ex officio* treasurer?

A. No, sir; I am not connected with that department at all.

Counsel for Complainant continued:

Q. Please read from this book the entries showing receipts from the United States Treasurer, giving dates and amounts, commencing at page 380.

(Objection by defendants' counsel, who objects to Mr.
59 Cowan's testifying from this book at all.)

A. I see here on this book, sir, an entry on—

January 4th, 1890, to check from United States Treasurer..	$3,750
April 14th, ditto ..	3,750
June 27th, ditto ..	3,750
August 6th, to check from U. S. Government.....	3,750
October 3rd, to check from U. S. Treasurer.....	3,750
January 2d, 1891, to check from U. S. Government.....	3,750
April 4th, to check from U. S. Government	3,750
July 9th, 1891, to cash from U. S. Gov't.....	3,750
October 9th, ditto	3,750
January 7th, 1892, to check from U. S. Treasurer	3,750
April 6th, 1892, to check from U. S. Treasurer.....	3,750
August 1st, to check from U. S. Treasurer....	3,750
October 14th, to check from U. S. Treasurer.....	3,750
January 7th, 1893, to check from U. S. Government... ..	3,750

Q. Please state what entry appears on this book as of February 12th, 1890.

A. I know nothing about this particular entry. I can read it out. Reads: "February 12th, to check from D. W. Bain, treasurer *ex officio* North Carolina department of agriculture, $1,000."

Q. What entry appears on June 28th, 1890?

A. Check from department of agriculture, $1,000.

Q. What entry appears on March 4th, 1891?

A. To voucher from agricultural department, $1,000.00.

Q. What entry appears on June 20th, 1891?

A. "To cash from agricultural department, $7,000.00."

Q. What entry appears on March 1st, 1892?

A. To check, State department of agriculture, $3,000.

Q. What on April 25th, 1892?

A. "To check, State department of agriculture, $2,000."

60 Q. What appears on July 2d, 1892?

A. "To check, State department of agriculture, $3,000."

(All of these entries appear under the head of the account of the experiment station of the department of agriculture.)

Cross-examination by S. F. MORDECAI, Esq., of counsel for defendants:

Q. Has not the experiment station been severed from the agricultural department and connected with the Agricultural & Mechanical college?

A. To the best of my knowledge and belief, it has.

Q. Was not that so prior to the account from which you have been reading?

A. I think it was under the laws of 1887 that the change was made. It was prior to the account that I have just been reading, to the best of my knowledge and belief.

Q. You do not know why that account has been kept under that heading?

A. It was customary heretofore to keep them all together. I suppose that was the reason (referring to the change above stated).

(The counsel for complainant objected.)

H. M. COWAN.

Raleigh, N. C., May 25th, 1893.

Sworn and subscribed before me 25th May, 1893.

W. T. SMITH, *Com'r.*

61 R. L. BURKHEAD, who was summoned to appear on the 26th, being examined this day by consent, deposes as follows:

Examined by J. W. HINSDALE, Esq., of counsel for complainants:

Q. What are your official duties in the treasurer's office?

A. I am clerk to the treasurer *ex officio* and I am clerk to the

treasurer of the Soldiers' home and to the treasurer of the experiment station.

Q. What is this book that I have in my hand?

A. That book is the book of the agricultural department—record of their receipts and expenditures—and of the experiment station. This is kept by me.

Q. The account that I see on page 386 of this book is headed, "Experiment station of the department of agriculture." What is this account?

A. That is the North Carolina experiment station account.

Q. It shows the amounts received from the United States Treasurer?

A. Yes, sir.

Q. I notice on February 12th, 1890, an entry, "To check from D. W. Bain, treasurer *ex officio* North Carolina department of agriculture." From what fund was that paid to the experiment station?

A. North Carolina department of agriculture.

Q. Do I understand that this $1,000 was paid over to the experiment station out of the funds in the department of agriculture arising from the fertilizer tax?

A. I suppose it was. I don't know of my own knowledge.

Q. From what sources did the North Carolina department of agriculture receive its funds at that time?

A. I don't know, sir.

Q. Is there a corresponding entry to this in the account of the department of agriculture?

A. Yes, sir.

62 Q. Will you be kind enough to turn to that?

A. That is on page 15 on this book, and the entry is February 11th, 1890; board No. of voucher, 1088; number and order of payment, 24; D. W. Bain, treasurer Hatch fund; paid Feb'y 11th, 1890, $1,000.

Q. Do you know what the Hatch fund is?

—. I do not, sir.

Q. I notice on June 28th an entry, "To check from treasurer department of agriculture, $1,000." Will you please turn to the corresponding entry in the department of agriculture account and state what it is?

A. On page 19 the entry is "D. W. Bain, treasurer experiment station, one thousand dollars, June 27th, 1890."

Q. (Under date of March 4th, 1891, he paid $382.00 to experiment station account.) (My books show no such entry. R. L. B.) I find an entry, "To voucher from agricultural department, $1,000.00." Will you please turn to the corresponding voucher under the department of agriculture account and state what it is?

A. On page 42 the entry is "Board, D. W. Bain, support, March 4th, 1891, $1,000."

Q. Do you know what the word "support" refers to?

A. Yes, sir; we only have one account with the agricultural department and that is for the support of that department.

Q. I see there is one heading of "Board" and another heading of "Commissioner."

A. I don't know what that is for. Probably Col. Robinson can tell you. I am not able to explain the difference. I know there are two classes of vouchers; one entered under the heading of "Board" and the other under the heading of "Commissioner."

Q. I observe under date of June 20th, 1891, the voucher,
63 "To cash from agricultural department, $7,000.00." Will you please turn to the corresponding voucher in the agricultural department account and state what it is?

A. Experiment station, $7,000.00; D. W. Bain, *ex officio* treasurer experiment station, June 20th, 1891, $7,000.

Q. Upon the date of March 1st, 1892, I see a voucher, "To check State department of agriculture, $3,000." Will you please turn to the corresponding entry in the agricultural department account and state what it is?

A. I find the entry, "D. W. Bain, treasurer *ex officio* experiment station, February 29th, 1892, $3,000.00."

Q. What does the voucher that corresponds to this account say?

A. D. W. Bain, treasurer, $3,000 on account of appropriation to fertilizer control station.

Q. Will you please read from this voucher what appears upon the face of it?

A. February 29th, to amount transferred this day, part payment of appropriation made at the December, 1891, meeting to the experiment and fertilizer control station, $3,000. The board at the December meeting appropriated the sum of $5,000 in the following action: Copy. Mr. Leazar moved an appropriation of $5,000 to the chemical station, which was adopted. T. K. Bruner, secretary.

Q. Please turn to the voucher for $7,000 which we have just passed over—the voucher of June 20th, 1891. Will you please read what appears upon the face of this voucher?

A. D. W. Bain, treasurer Hatch fund experiment station, June 20th, 1891, to amount order paid the experiment station on account of official analyses of commercial fertilizers charged that day (June 20). The following is the action of the board: Mr.
Leazar moved that the board allow $8,000 for the work done
64 by the State chemist for the board, subject to a deduction of $1,000 already paid. Adopted. T. K. Bruner, secretary to the board.

Q. Will you please turn to voucher of March 4th, 1891, $1,000, and state what appears upon it?

A. D. W. Bain, treasurer experiment station, March 3rd, 1891, to amount appropriated at December, 1890, meeting of the board as part payment for 1891 to the experiment station and fertilizer control station, $1,000.00. Paid in accord with motion passed at December, 1890, meeting of the board. T. K. Bruner, secretary. D. W. Bain, treasurer of the experiment station, receipts for this money.

Q. Will you please turn now to voucher of June 28th, 1890, and state what appears upon the face of that voucher?

A. These were here before I came, and they are packed away under the supreme court building. This answer would also apply to a voucher for anything before December, 1890.

Q. Please turn to voucher of April 25th, 1892, $2,000, and state what appears upon the face of it.

A. D. W. Bain, treasurer, April 15th, 1892, to balance appropriated at the December, 1891, meeting of the board, $2,000, the following being the motion: "Mr. Leazar moved an appropriation of $5,000 to the chemical station," which was adopted. T. K. Bruner, secretary. (This covers one-half of the fiscal year.) The $3,000 was paid on warrant #1246, February 29th, 1892.

Q. The warrant #1246 is that which appears under date of March 1st, 1892?

A. Yes, sir.

Q. Will you please look at voucher for the entry of July 2d, 1892, $3,000, and state what appears upon the face of it?

A. Department of agriculture, board of agriculture. D.
65 W. Bain, treasurer experiment station, debtor, June 30th, 1892, to amount appropriated at the June meeting of the board to pay for official analytical work done for department of agriculture, $3,000. On the back of this voucher appears: D. W. Bain, *ex officio* treasurer, will pay the within bill of $3,000. Received payment. D. W. Bain, treasurer *ex officio*, per R. L. Burkhead, clerk. It is stamped: Paid July 1st, 1892.

Q. Out of what moneys were these several payments made?

A. Moneys to the credit of the agricultural department.

Q. Arising from what?

A. I got all of mine from the State treasurer.

Q. Did not all of this money that was placed to the credit of the agricultural department arise from the fertilizer tax?

A. Yes, sir.

Q. I will ask you, sir, if the formula of the receipts and vouchers in all of these cases is not similar to the last one that you have read in full.

A. Yes, sir.

Q. Have you any record of a loan or advancement or payment out of the funds of the department of agriculture to the World's fair?

A. I have that, sir (exhibiting account).

Q. Have you an account in this book headed "Account of World's Fair executive committee" with the department of agriculture?

A. Yes, sir.

Q. Will you please read from this account the several items that appear upon it?

A. January 27th, 1892, credit by board warrant from department of agriculture, #1242, appropriated for expenses of board World's Fair work, 1893, $9,000.

Q. Can you turn to the voucher or warrant in which that transfer was made?

A. Yes, sir.

Q. What appears upon the face of this warrant?

66 A. D. W. Bain, treasurer *ex officio* boards World's Fair work: D. W. Bain, *ex officio* treasurer of the board of agriculture, will pay the within bill of $9,000. Received payment, D. W. Bain, treasurer *ex officio*. Department of agriculture, board of agriculture to D. W. Bain, State treasurer, debtor, January 27th, 1892, to amount appropriated to Columbian Exposition work, as per enclosure, $9,000.

Q. Please read the enclosure.

A.—

RALEIGH, N. C., *January 27th*, 1892.

Hon. D. W. Bain, State treasurer, Raleigh, N. C.

DEAR SIR: At the June, 1892, session of the State board of agriculture the following action was had: The secretary is instructed to transmit official copies of the action appropriating $9,000 to the work of making an exhibit at Chicago and of section V of the instructions of the World's Fair executive committee to the State treasurer. In accordance therewith I hand you below the actions referred to. At the December, 1891, meeting of the board of agriculture the following was adopted: Resolved, That the board of agriculture appropriate out of the funds belonging to the said board and now remaining in hand after defraying the current expenses thereof an amount not to exceed the sum of $9,000, to be used and employed under the direction of said board in making an exhibit of the resources of North Carolina at the World's fair to be held in the city of Chicago in the year 1893. At the January, 1892, meeting of the board the following was adopted, it being section V of the instructions to the executive committee: That the said executive committee is authorized to draw warrants on the treasurer for money to defray the necessary expenses herein contemplated, to be paid by him out of the appropriation heretofore made or any appropriation which may hereafter be made by the board of agriculture for the purpose of making an illustrated exhibit at the World's fair
67 at Chicago. All of which is respectfully submitted.

Very respectfully yours,

T. K. BRUNER, *Secretary*.

(This letter is written upon paper headed "the North Carolina department of agriculture.")

Q. This payment was made to whom and when—amounting to $9,000?

A. It was made to T. K. Bruner, commissioner, on January 28th, 1892, $1,500.00; on January 19th, $500.00, and on June 17th, $500; on July 22d, $5,000; on November 29th, $1,500.00, all in the year 1892, making an aggregate of $9,000. The $9,000 was paid over in bulk to Bain, State treasurer, and Bain, State treasurer, made these several disbursements to Bruner, amounting to $9,000 in the aggregate, as stated before, $9,000 in all being appropriated by the board of agriculture.

Q. What account appears from pages one to ten, inclusive, in this book?

A. Account of the North Carolina experiment station for the fiscal year beginning December 1st, 1889, and ending Nov. 30th, 1890.

Q. What account appears in this book from pages 13 to 24, inclusive?

A. Account of department of agriculture for fiscal year beginning Dec. 1st, 1889, ending Nov. 30th, 1890.

Q. What account appears from page 26 to page 36, inclusive?

A. Account of N. C. experiment station, fiscal year beginning Dec. 1st, 1890, and ending Nov. 30th, 1891.

Q. What account appears on pages 39 to 49, inclusive?

A. Account of department of agriculture for fiscal year beginning Dec. 1st, 1890, and ending Nov. 30th, 1891.

Q. What account appears on pages 51 to 62, inclusive?

A. Account N. C. experiment station, fiscal year beginning Dec. 1st, 1891, ending Nov. 30th, 1892.

Q. What account appears on pages 63 to 73, inclusive?

68 A. Account of N. C. department of agriculture, fiscal year beginning Dec. 1st, 1891, ending Nov. 30th, 1892.

Q. What account appears on pages 74 to 78, inclusive?

A. Account of experiment station, fiscal year beginning Dec. 1st, 1892, up to the current month.

Q. What appears on pages 88 to 92, inclusive?

A. Account of N. C. department of agriculture from Dec. 1st, 1892, to the current month. That is all that appears on this book except what we have already seen.

Q. Will you please turn to voucher of March 9th, 1893, W. S. Primrose, $670.66, and state what appears on the face of it?

A. The following appears on the face of the warrant: "Department of agriculture board of agriculture. To W. S. Primrose, Dr., March 9th, 1893, to premiums on insurance as per enclosed list, $670.66. The board of agriculture, at its December, 1892, meeting, ordered the insurance on the building and furniture increased to $25,000. T. K. Bruner, secretary." This is for insurance on the agricultural building & furniture.

Q. Please turn to voucher # 1334, S. McD. Tate, $3,000, and state what appears upon it.

A. "To S. McD. Tate, treas. experiment station, on account of appropriation for analytical work, Dr. The N. C. board of agriculture to S. McD. Tate, treas. experiment station, Dr., March 8th, 1893, to balance of semi-annual appropriation for analytical work, $3,000."

Q. Please turn to voucher # 2165, P. C. Ennis, incidentals, $135.56, and state what appears.

A. The items are—

Southern Express Co.	$90 05
Western Union Telegraph Company	31 42
Postal Telegraph & Cable Co.	14 09

69 Q. Please turn to voucher # 1336, Josephus Daniels, printing, $139.31, and read what appears.

A.—

MARCH 13TH, 1893.

Department of agriculture, board of agriculture, to Josephus Daniels, State printer, Dr.

Jan. 19th, 1893.	Printing 10,000 monthly report blanks..	$32 50
Feb. 7th.	Printing 6,000 copies of bulletin—	
	Composition.....	62 06
	Press-work	31 25
	Binding	13 50
	Total.....	$139 31

Q. Please turn to voucher 1331, Feb. 18th, 1893, $2,000, and state what appears.

A. Department of agriculture, board of agriculture, to N. C. agricultural experiment station, Dr., Feb. 18th, 1893, to part payment for analytical work for experiment station furnishing samples of fertilizers ordered at the December, 1892, meeting of the board of agriculture, $2,000.

Q. Please look at voucher # 1339, Edwards & Broughton, paper, printing, etc., $708.05, date May 12th, 1893, and state what this voucher was given for.

A. Paper, printing, etc.

Q. How many tags appear to be charged for in this voucher and at what price in the aggregate?

A. 615,000 tags at 40c. a thousand.

Q. How many dead-lock hooks and at what price per thousand?

A. 595,000 at 70c. a thousand.

Q. Please look at voucher # 319, date of April 17th, 1893—experiment station voucher—and tell me what it is for.

(Objection by defendants.)

By the JUDGE: Testimony admitted.

A.—

800 copies of bulletin, 88b (b).....		$16 73
1,200 copies of bulletin, 88c (c)....		22 13
600 ditto,	88d (d).....	37 25

Q. Please look at voucher # 293, dated Mar. 20th, $149.94—experiment station voucher—and tell me what it is for.

(Obj. by defendants.)

A. This is for paper.

(By the JUDGE: Admitted.)

70 Q. Please turn to board of agriculture voucher # 1303, dated Nov. 8th, 1892, $669.00, Edwards & Broughton, and state what it is for.

A. Printing, paper, tags, and hooks; 900,000 hooks, $630.00; 10,000 tags, $4.00, are among the items.

Q. Please turn to # 1281, Josephus Daniels, June 30th, 1892, $278.10, and state what it is for.

A. Printing, etc.

(It is admitted by counsel for complainant that all of them are for legitimate expenses, except such as are specially noted herein.)

1,000 envelopes World's fair, per Dr. Battle	$3 00
7,680 copies April bulletin	95 80
1,500 circulars (opinion Att'y Gen.)	5 50
7,680 copies of May bulletin	47 01
7,680 copies of June bulletin	77 72

Q. Please refer to voucher # 1280, June 20th, $150.00. What is this?

A. Payment of attorneys' fees in the case of Patapsco Guano Company *vs.* Board of Agriculture of North Carolina.

Q. Now look at # 1279, date of June 18th. What is this?

A. This is for services in the same case. One is to Battle & Mordecai and the other to Busbee & Busbee.

Q. Please look at # 1262, May 7th, $100.00 attorneys' fees (Battle & Mordecai), and state in what case this fee was paid.

A. Case of Lord & Polk Chemical Company *vs.* Board of Agriculture.

Q. Please turn to Nos. 1257 and 1259, paid on April 8th, 1892, and April 25th, 1892, respectively, and state what these are for.

A. # 1257, Josephus Daniels, public printer, for printing, etc. This voucher includes—

Printing 100 list fertilizers	$8 00
7,680 copies February bulletin	113 18
7,680 copies March bulletin	78 50

(The other items are admitted by complainant to be proper
71 expenditures.)

#1259, Edwards & Broughton, paper, printing, &c., audited and entered April 23rd, 1892. This voucher embraces—

500 tags	20
500 tags, 20 ⎫ 2,000 " 80 ⎭	$1 00
100,000 tags	40 00
96,000 tags	38 40
Printing 410,000 abstract, form A 1; 10,000 blank, form A 2; 10,000 blank, form A 3	529 00

(The other items on this voucher are admitted to be proper.)

Q. Please turn to voucher, department of agriculture, # 1243, paid on January 30th, 1892, and state what it is for.

A. Josephus Daniels, State printer, paper, printing, etc., audited and entered Jan. 29th, 1892. This voucher contains the following items:

Balance on press-work, November bulletin	$8 00
Printing 1,000 copies December bulletin	13 64
Printing 7,680 copies January bulletin	45 96
Printing 250 slips World's exposition	2 00

(The other items on this voucher are admitted to be proper expenditures.)

Q. Please turn to Nos. 1241 and 1240, dated January 25th, 1892, and state what appears upon the faces of them.

A. #1241, Edwards & Broughton, printing fertilizer tags, etc., audited and entered January 22d, 1892. This voucher contains the following items:

Printing 199,000 tags	$79 60
500,000 hooks	350 00
Printing 1,500 tags	60

#1240, audited and entered January 22d, 1892. This is
72 for printing bill in the case of Board of Agriculture *vs.* Durham Fertilizer Company, in the Supreme Court, $7.40.

Q. Please look at #1227, date of 19th of December, 1891, $434.45, and state what this is for.

A. This is for—

Attorneys' fees, deposition, Board of Agriculture *vs.* Durham Mfg. Co	$20 00
Ditto	20 00
Stenographer's services	9 60
Professional services & expenses attending court (B. & M.)	111 85
Professional services in the same case (B. & B.)	125 00
Expenses incurred in taking depositions, &c	48 00
Professional services of Hicks & Hicks in same case	100 00
Total	$434 45

Q. Please look at voucher # 1210 and state what it is for.

A. Audited and entered November 21st, 1891; tags and printing, amounting to $170.80.

Q. Please look at voucher # 1212 and state what it is for.

A. Audited and entered November 28th, 1891; Josephus Daniels. This voucher contains the following items:

7,680 copies of October bulletin	$32 81
7,680 copies of November bulletin	50 75

(The other items on this voucher are admitted to be correct.)

Q. Please look at voucher # 1211 and state what it is for.

A. November 28th, 1891. This voucher contains the items:

Printing 330 tags	14
Printing 262,000 (tags)	104 80
500,000 hooks	350 00

(The other items inn the voucher are admitted to be proper charges.)

Q. Please look at voucher # 1907 and state what it is for.

A. This is dated department of commissioner, audited and
73 entered September 18th, 1891. To printing mailing list, agricultural bulletin, $22.

Q. Please look at # 1193, date August 31st, 1891, and state what it is for.

A. This voucher is for T. C. Harris' salary as curator, audited and entered August 31st, 1891—salary for Aug., 75 dollars.

Q. Do you know what Mr. Harris is curator of?

A. The State museum of the agricultural department.

Q. Please look at # 1192 and state what that is for.

A. Josephus Daniels, printing, audited and entered Aug. 21st, 1891. This voucher contains the following items:

5,760 copies June bulletin	$59 31
5,760 copies July bulletin	16 07
Paper and printing 16,000 wrappers	20 00

(The other items on this voucher are admitted to be correct.)

Q. Please look at voucher #1832, $957.35, and state what this is for.

A. Paper, printing, etc., audited and entered June 10th, 1891, department of commissioner. This voucher contains the following items:

100,000 tags and printing	$40 00
Reprinting 20,000 tags	4 00
25,000 tags and printing	10 00
50,000 tags and printing	20 00
10,000 tags and printing	4 00
400,000 D. L. hooks	280 00
400,000 abstract blanks 10,000 blanks, form A 2 10,000 blanks, form A 3	545 00
10,000 additional abstracts	8 00
Additional cost larger and better paper used in statistical blanks	37 00

(The other items in this voucher are admitted to be correct.)

74 Q. Please turn to voucher # 1189 and state what it is for.

A. Josephus Daniels, printing, audited and entered June 27th, 1891. This voucher contains—

3,840 copies of May bulletin	$63 88
10,000 additional copies of May bulletin	2 75

(The other items of this voucher are admitted to be proper.)

Q. Now, please look at # 1817, sir, and state what it is for.

A. Audited and entered May 21st, and is for fifty-two reams of paper, $117.22.

Q. Please look at #1172, May 2d. What is this for?

A. Josephus Daniels, printer, audited and entered May 2d, 1891. This voucher contains—

Printing December bulletin	$26 90
10,000 monthly railroad reports	35 00
1,000 order sheets for tags	6 00
March bulletin	28 22
April bulletin	59 81

(The other items in this voucher are admitted to be correct.)

Q. Now, please, sir, look at #1168, April 10th, 1891. What is this for?

A. Edwards & Broughton, paper and printing, audited and entered April 10th, 1891; hooks and tags, $549.60.

Q. What is #1164 for?

A. Edwards & Broughton, printing, audited and entered Feb. 19th, 1891. The bill contains the following items:

550,000 tags	$220 00
550,000 hooks	375 00
Express charges	37 70

(The other items on this voucher are admitted to be correct.)

Q. Will you please look at department of agriculture account and state for what months Mr. T. C. Harris received a salary as curator, commencing with the entry of Dec. 31st, 1890?

A. On December 31st he received $50.00. He has received every month from December 31st, 1890, up to the present time
75 $75.00 per month, and is paid by the department of agriculture.

Col. HINSDALE: I wish to file with this account as a part of this deposition all these accounts. I do not care to go back of the fiscal year of 1890–'91.

The attorney for defendants objects to accounts, except those of the department of agriculture, and to any of those back of January 21st, 1891.

The paper hereto annexed, marked "Exhibit B," is a copy of the accounts as they appear upon the books in this office from December 1st, 1890, to May 1st, 1893.

R. L. BURKHEAD.

Raleigh, N. C., May 25th, 1893.

Sworn & subscribed before me this 25th of May, 1893.

W. T. SMITH, *Com'r.*

76 *Paid on Account of Support of the No. Ca. Experiment Station.*

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
108	920	1	F. B. Carpenter	Dec. 1st, '90	$91 66
106	918	2	H. B. Battle	"	191 66
132	936	3	H. L. Harris	"	11 75
123	931	4	R. S. Tucker	"	18 62
107	919	5	B. W. Kilgore	"	100 00
125	935	6	Thos. H. Briggs & Sons	"	8 86
111	923	7	Gerald McCarthy	"	83 33
121	917	8	Crowder & Rand	2nd,	59 21
127	933	9	Latta & Myatt	"	47 26
128	937	10	F. E. Emry	"	45 00
110	922	11	F. E. Emry	"	125 00
122	924	12	W. F. Massey	5th,	41 66
116	928	13	J. P. B. Massey	"	40 00
129	938	14	W. F. Massey	"	38 39
124	932	15	Williamson & Upchurch	"	67 40
120	916	16	Morgan Envelope Co.	"	13 00
126	934	17	E. L. Albro	"	19 43
119	915	18	Va. Paper Co	"	50 00
101	906	19	Northern Distilling Co	12th,	22 50
133	939	20	H. B. Battle	"	50 00
130	940	21	"	31st,	191 66
134	941	22	B. W. Kilgore	"	100 00
135	942	23	F. B. Carpenter	"	91 66
136	943	24	J. R. Harris	"	75 00
137	944	25	Frank E. Emry	"	125 00
140	947	26	H. L. Harris	"	50 00
141	948	27	J. Hunter Lawrence	"	25 00
144	951	28	Wm. Whitaker	"	25 00
145	952	29	Willie Carroll	"	16 66
					$1,832 71

January, 1891.

139	946	30	W. F. Massey	Jan. 2d, '91	41 66
142	949	31	J. P. B. Massey	"	48 00
138	945	32	Gerald McCarthy	3rd,	100 00
143	950	33	T. K. Bruner	"	16 66
146	971	34	Allen & Cram	5th,	47 40
164	961	35	Julius Lewis & Co.	"	18 50
156	959	36	H. L. Harris, sec't'y	"	50 00
163	953	37	"	"	40 00
157	958	38	"	"	6 17
158	957	39	"	"	275 00
160	955	40	"	"	9 16
162	954	41	"	"	9 75
159	956	42	"	"	9 00
147	960	43	"	"	40 00
161	962	44	N. V. Randolph & Co.	7th,	12 38
77 154	964	45	Emil Greiner	7th,	14 35
149	969	46	Wire Fence Imp. Co.	"	24 53
155	963	47	Fairbanks & Co.	"	68 00
148	970	48	Brandon Printing Co.	"	50 50
152	966	49	Eimer & Amend	"	14 56
151	967	50	Photo. Eng. Co.	"	14 00

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
150	968	51	Raleigh Gas Co.	Jan. 8th, '91	16 40
153	965	52	W. B. Hutchings.	12th,	36 80
131	972	53	Raleigh Oil Mill & Fertilizer Co.	"	25 67
173	977	54	J. C. S. Lumsden.	20th,	8 37
167	983	55	H. L. Harris, sec't'y	"	25 00
177	973	56	F. E. Emry.	"	45 00
175	975	57	Do.	"	75 00
176	974	58	Do.	"	70 00
166	984	59	Jas. McKimmon & Co.	21st,	4 90
169	981	60	N. V. Randolph.	22nd,	10 00
170	980	61	Henry J. Green.	"	17 00
168	982	62	Webbs Adder Co.	"	7 14
165	985	63	Jas. W. Queen & Co.	"	4 43
172	978	64	B. Westerman & Co.	"	13 25
171	979	65	Norman W. Henly & Co.	"	12 75
174	976	66	Eimer & Amend	"	37 67
183	991	67	Gerald McCarthy	31st,	100 00
182	990	68	Frank E. Emry.	"	125 00
187	995	69	T. K. Bruner.	"	16 66
185	993	70	H. L. Harris.	"	50 00
190	998	71	Willie Carroll.	"	16 66
186	994	72	J. Hunter Lawrence.	"	25 00
178	986	73	H. B. Battle.	"	191 66
192	1000	74	Do.	"	42 96
189	997	75	Wm. Whitaker.	"	25 00
180	988	76	F. B. Carpenter.	"	91 66
181	989	77	J. R. Harris.	"	75 00
179	987	78	B. W. Kilgore.	"	100 00
					$2,178 60

February, 1891.

191	999	79	J. M. Broughton & Co., ag'ts.	Feb'y 4th,	25 80
188	996	80	J. B. P. Massey.	"	48 00
184	992	81	W. F. Massey.	"	41 66
194	1001	82	Raleigh Telephone Ex.	21st,	120 00
200	1008	83	J. C. Brewster, m'g'r.	"	7 00
193	1002	84	H. P. Bilyeu.	"	15 00
197	1005	85	R. S. Tucker.	"	29 43
201	1012	86	H. L. Harris.	"	55 00
208	1011	87	Do.	"	3 20
203	1010	88	Do.	"	5 50
206	1016	89	J. C. S. Lumsden.	"	28 35
199	1007	90	Raleigh O. M. & Fert Co.	24th,	21 77
202	1009	91	J. M. Broughton & Co, ag'ts.	"	31 80
204	1013	92	Frank E. Emry.	"	40 08
78 207	1014	93	Frank E. Emry.	24th,	50 00
195	1003	94	N. C. Wagon Co.	25th,	32 50
221	1029	95	Willie Carroll.	28th,	16 66
220	1028	96	William Whitaker.	"	25 00
210	1018	97	B. W. Kilgore.	"	100 00
212	1020	98	J. R. Harris	"	75 00
211	1019	99	F. B. Carpenter.	"	91 66
219	1027	100	T. K. Bruner	"	16 66

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
216	1024	101	H. L. Harris	Feb'y 28th, '91	50 00
209	1017	102	H. B. Battle	"	191 66
217	1025	103	J. N. Hubbard	"	20 00
					$1,141 73
			March, 1891.		
214	1022	104	Gerald McCarthy	Mar. 2nd, '91	100 00
215	1023	105	W. F. Massey	3rd,	41 66
218	1026	106	J. B. P. Massey	"	48 00
222	1030	107	H. B. Battle	"	625 00
213	1021	108	F. E. Emry	"	125 00
223	1031	109	Gerald McCarthy	18th,	50 00
205	1015	110	Wiard Mlow Co	19th,	8 87
196	1004	111	Wm. P. Walters' Sons	"	11 40
198	1006	112	Eimer & Amend	"	64 19
					$1,074 12
234	1042	113	T. K. Bruner	April 4th, 1891	16 66
228	1039	114	T. L. Blalock	"	60 00
227	1035	115	J. R. Harris	"	75 00
226	1034	116	F. B. Carpenter	"	91 66
237	1046	117	Willie Carroll	"	16 66
233	1041	118	J. B. Hubbard	"	22 50
232	1040	119	Hunter L. Harris	"	50 00
225	1033	120	B. W. Kilgore	"	100 00
224	1032	121	H. B. Battle	"	191 66
236	1044	122	Wm. Whitaker	"	25 00
229	1036	123	Frank E. Emry	"	125 00
231	1038	124	W. F. Massey	"	41 66
230	1037	125	Gerald McCarthy	"	50 00
255	1063	126	H. L. Harris, sec't'y	6th,	64 35
257	1065	127	Do.	"	60 00
247	1055	128	Raleigh Gas Co	"	27 20
246	1054	129	W. C. & A. B. Stronach	"	5 00
253	1061	130	H. L. Harris, sec'y	"	50 93
249	1057	131	Do.	"	16 25
251	1059	132	Do.	"	23 25
254	1062	133	Do.	"	28 20
252	1060	134	Do.	"	19 70
256	1064	135	Do.	"	15 00
248	1056	136	Do	"	24 00
250	1058	137	Do.	"	11 00
238	1046	138	John R. Zimmerman	"	40 00
243	1051	139	T. W. Wood & Sons	"	10 90
242	1050	140	Alexander Seed & Drug Co.	"	10 55
239	1047	141	E. H. & J. A. Meadows	"	11 60
241	1049	142	Jas. L. Tobin	April 6th, '91	5 34
240	1048	143	Baker & Adamson	"	16 85
244	1052	144	Eimer & Amend	"	29 56
261	1069	146	W. F. Massey	7th,	30 00

79

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
235	1043	147	J. B. P. Massey	April 7th, '91	48 00
258	1066	148	Frank E. Emry	10th,	85 00
259	1067	149	Do.	"	43 75
260	1068	150	Do.	"	40 00
268	1070	151	Gerald McCarthy	"	50 00
276	1071	152	H. L. Harris, sec't'y	"	11 88
275	1072	153	Do.	"	20 00
270	1073	154	Do.	"	469 28
269	1074	155	Do.	"	130 00
274	1075	156	E. B. Crow	"	20 00
273	1076	157	Henry Nungesser	20th,	4 11
271	1078	158	The Globe Co.	"	12 00
272	1077	159	Peter Henderson	"	15 55
263	1081	160	Chas. F. Pitt & Sons	"	15 91
262	1082	161	Baker & Adamson	"	14 55
266	1079	162	Raleigh Oil Mill & Fert. Co.	21st,	9 60
277	1083	163	H. B. Battle	30th,	191 66
278	1084	164	B. W. Kilgore	"	100 00
280	1086	165	J. R. Harris	"	75 00
281	1087	166	T. L. Blalock	"	60 00
282	1088	167	Frank E. Emry	"	125 00
285	1091	168	H. L. Harris	"	50 00
286	1092	169	J. B. Hubbard	"	22 50
287	1093	170	T. K. Bruner	"	16 66
289	1095	171	Wm. Whitaker	"	25 00
290	1096	172	Willie Carroll	"	16 66
					$3,042 97

May, 1891.

283	1089	173	Gerald McCarthy	May 1st, '91	50 00
284	1090	174	W. F. Massey	2nd,	41 66
288	1094	175	J. B. P. Massey	"	48 00
279	1085	176	F. B. Carpenter	4th,	91 66
264	1080	177	N. C. State Penitentiary	"	18 90
292	1098	178	H. B. Battle	16th,	95 83
291	1097	179	Gerald McCarthy	18th,	50 00
301	1102	180	Frank E. Emry	19th,	80 00
300	1099	181	H. L. Harris	"	7 04
295	1101	182	Do.	"	10 68
293	1100	183	Do.	"	33 00
296	1106	184	Jones & Powell	"	8 60
298	1104	185	Latta & Myatt	"	14 66
265	1109	186	Williamson & Upchurch	21st,	62 25
305	1111	187	H. L. Harris	"	50 00
297	1105	188	J. M. Broughton & Co.	"	23 80
303	1113	189	Do.	"	6 80
267	1108	190	Crowder & Rand	26th,	36 15
308	1115	191	H. B. Battle, director	"	12 00
80					
309	1116	192	H. B. Battle, director	May 26th, '91	11 80
294	1107	193	Everett, Waddey Co.	27th,	6 00
299	1103	194	Norman W. Henley & Co.	"	12 75
304	1112	195	W. S. Powell & Co.	"	6 00
306	1110	196	Ass. Am. Coll. & Expm't Sta's.	"	10 00

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
312	1119	197	F. B. Carpenter	30th,	91 66
311	1118	198	B. W. Kilgore	"	100 00
317	1124	199	Hunter L. Harris	"	50 00
324	1131	200	H. L. Harris	"	40 00
310	1117	201	H. B. Battle	"	95 83
319	1126	202	T. K. Bruner	"	16 66
318	1125	203	J. B. Hubbard	"	25 00
321	1128	204	Wm. Whitaker	"	25 00
					$1,231 73
			June, 1891.		
322	1129	205	Willie Carroll	June 1st, 1891	16 66
323	1130	206	E. M. Uzzell	"	25 00
313	1120	207	J. R. Harris	"	75 00
314	1121	208	Frank E. Emry	"	125 00
302	1114	209	Do.	2nd,	50 00
315	1122	210	Gerald McCarthy	"	50 00
316	1123	211	W. F. Massey	"	41 66
320	1127	212	J. B. P. Massey	"	48 00
325	1132	213	H. L. Harris, sec't'y	12th,	60 00
326	1133	214	H. B. Battle	20th,	95 83
327	1134	215	Raleigh Paper Co	"	274 89
328	1135	216	J. L. Cunni-ghim, sec't'y	"	501 00
329	1136	217	H. B. Battle	30th,	95 91
330	1137	218	B. W. Kilgore	"	100 00
332	1139	219	J. R. Harris	"	75 00
335	1142	220	J. L. Cunninghim	"	25 00
343	1150	221	T. L. Blalock	"	16 00
339	1146	222	William Whitaker	"	25 00
336	1143	223	J. B. Hubbard	"	30 00
344	1151	224	J. L. Cunninghim	"	17 37
337	1144	225	T. K. Bruner	"	16 66
333	1140	226	Gerald McCarthy	"	100 00
338	1145	227	F. E. Massy	"	125 00
342	1149	228	H. L. Harris	"	25 00
					$2,013 98
			July, 1893.		
340	.....	229	Willie Carroll	July 1st,	16 70
7	.....	230	J. L. Cunninghim, sec'y	15th,	14 12
8	.....	231	Do.	"	9 20
16	.....	232	Do.	"	50 00
3	.....	233	Do.	"	7 20
5	.....	234	Do.	"	570 33
9	.....	235	Do.	"	50 78
81					
15	.....	236	Gerald McCarthy	July 16th,	62 50
2	.....	237	Frank E. Emry	"	65 00
1	.....	238	Do.	"	95 00
341	.....	239	J. B. P. Massey	18th,	48 00
334	.....	240	W. F. Massey	"	41 74

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
14	.....	241	R. S. Tucker.....	18th,	10 00
331	.....	242	F. B. Carpenter.....	20th,	91 74
12	.....	243	W. H. & R. S. Tucker & Co.	"	17 08
4	.....	244	W. C. & A. B. Stronach ...	"	5 00
10	.....	245	L. R. Wyatt.....	"	12 90
11	.....	246	Do.	"	5 75
13	.....	247	Raleigh Telephone Exchange	28th,	48 00
6	.....	248	Eimer & Amend	"	16 49
21	.....	249	T. L. Blalock	21st,	60 00
29	.....	250	Wm. Whitaker	"	25 00
26	.....	251	E. B. Crow	"	22 50
27	.....	252	T. K. Bruner	"	16 66
20	.....	253	J. R. Harris	"	83 33
25	.....	254	J. L. Cunningham.....	"	50 00
					$1,495 02

August, 1891.

31	.....	255	W. F. Massey.....	1st,	75 00
17	.....	256	H. B. Battle.....	"	208 33
30	.....	257	Willie Carroll.....	"	16 66
23	.....	258	Gerald McCarthy	"	62 50
32	.....	259	J. L. Cunninghim.....	4th,	445 72
22	.....	260	Frank E. Emry.....	"	125 00
28	.....	261	O. E. Warren.....	3rd,	50 00
33	.....	262	J. L. Cunninghim..	10th,	200 00
24	.....	263	W. F. Massey.....	11th,	41 66
18	.....	264	B. W. Kilgore.....	12th,	100 00
19	.....	265	F. B. Carpenter.....	18th,	91 66
39	.....	266	Frank E. Emry.....	31st,	125 00
					$1,541 53

September, 1891.

37	.....	267	J. R. Harris.....	1st,	83 33
47	.....	268	Willie Carroll..	"	16 66
48	.....	269	J. L. Cunninghim.....	"	50 00
34	.....	270	H. B. Battle	2nd,	208 33
40	.....	271	Gerald McCarthy.....	1st,	125 00
42	.....	272	J. L. Cunninghim.....	"	50 00
43	.....	273	E. B. Crow	"	25 00
41	.....	274	W. F. Massey.....	"	41 66
46	.....	275	Wm. Whitaker	"	25 00
35	.....	276	B. W. Kilgore.....	"	100 00
38	.....	277	T. L. Blalock	2nd,	60 00
45	.....	278	O. E. Warren	"	50 00
44	.....	279	T. K. Bruner	3rd,	16 66
52	.....	280	D. H. Roe & Co.....	4th,	8 94
64	.....	281	John F. Diemor.....	"	27 17
54	.....	282	Levy Type Co.....	"	9 60
65	.....	283	Va. Paper Co..	"	25 38
51	.....	284	Eimer & Amend	"	26 83
55	.....	285	Peter Henderson & Co.....	"	7 80

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher. Sta. No.	No. of voucher. Aud No.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
82 59	.....	286	J. L. Cunninghim.....	Sep. 4th, '91	16 00
62	.....	287	Do.	"	40 00
60	.....	288	Do.	"	9 59
67	.....	289	Do.	"	25 00
66	.....	290	Do.	"	31 50
61	.....	291	Do.	"	4 40
58	.....	292	Do.	"	15 00
57	.....	293	Do.	"	40 00
56	.....	294	Do.	"	60 00
53	.....	295	H. B. Battle.....	5th,	47 05
63	.....	296	L. R. Wyatt	"	109 20
68	.....	297	Frank E. Emry.....	7th,	75 00
50	.....	298	Crowder & Rand.....	"	44 49
49	.....	299	Williamson & Upchurch....	"	24 00
71	.....	300	E. M. Uzzell.....	7th,	38 00
108	.....	301	J. L. Cunninghim.....	9th,	19 17
36	.....	302	F. B. Carpenter.....	"	91 66
69	.....	303	Raleigh Gas Co	11th,	26 60
73	.....	304	Gerald McCarthy	16th,	62 50
72	.....	305	H. B. Battle.....	17th,	104 16
74	.....	306	J. L. Cunninghim.....	"	269 50
70	.....	307	Raleigh Tel. Ex.....	19th,	11 00
78	.....	308	J. L. Cunninghim.....	23rd,	20 00
76	.....	309	Do.	"	25 00
82	.....	310	Do.	"	6 00
83	.....	311	Do.	"	23 00
81	.....	312	Do.	23rd,	380 23
79	.....	313	Do.	"	26 65
84	.....	314	Do.	"	36 00
86	.....	315	Do.	"	15 41
77	.....	316	Do.	"	17 00
80	.....	317	Do.	"	5 30
90	.....	318	Do.	"	26 76
75	.....	319	Do.	"	29 60
88	.....	320	A. Williams & Co.....	24th,	6 25
87	.....	321	Brandon Printing Company.	"	49 49
85	.....	322	Frank E. Emry.....	"	80 00
89	.....	323	Raleigh Gas Co	28th,	15 80
92	.....	324	B. W. Kilgore.....	30th,	100 00
94	.....	325	T. L. Blalock	"	70 00
93	.....	326	F. B. Carpenter.....	"	91 66
95	.....	327	J. S. Meng.....	"	33 33
110	.....	328	B. S. Skinner.....	"	66 66
91	.....	329	H. B. Battle.....	"	104 17
109	.....	330	Do.	"	300 00
					$3,649 00
			October, 1891.		
104	.....	331	Willie Carroll.....	1st,	16 66
105	.....	332	J. L. Cunninghim.....	2nd,	60 00
99	.....	333	Do.	"	50 00
101	.....	334	Paul Monk.....	"	5 00
106	.....	335	T. K. Bruner	"	16 66
97	.....	336	Gerald McCarthy	"	62 50

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
83 107	.....	337	J. L. Cunninghim.....	Oct. 3nd, '91	$5 00
96	.....	338	F. E. Emry.....	"	125 00
103	.....	339	Wm. Whitaker	"	25 00
102	.....	340	Alexander Rhodes.....	3rd,	16 66
98	.....	341	W. F. Massey.....	"	83 32
110	.....	342	H. B. Battle.....	16th,	104 16
111	.....	343	B. W. Kilgore	17th,	50 00
112	.....	344	F. E. Emry.....	27th,	100 00
114	.....	345	Do.	"	50 00
113	.....	346	J. L. Cunninghim, sec't'y..	"	40 00
122	.....	347	W. F. Massey.....	31st,	83 33
123	.....	348	B. S. Skinner.....	"	66 66
128	.....	349	Wm. Whitaker	"	25 00
119	.....	350	J. S. Meng	"	66 66
118	.....	351	T. L. Blalock.....	"	70 00
117	.....	352	F. B. Carpenter.....	"	91 66
129	.....	353	Willie Carroll.....	"	16 66
121	.....	354	Gerald McCarthy	"	125 00
115	.....	355	H. B. Battle.....	"	104 17
					$1,459 10
			November, 1891.		
127	.....	356	Alexander Rhodes.....	2nd,	50 00
120	.....	357	Frank E. Emry.....	"	125 00
124	.....	258	J. L. Cunninghim.....	"	50 00
126	.....	359	T. K. Bruner	"	16 66
136	.....	360	J. L. Cunninghim.....	"	33 00
132	.....	361	Do.	"	20 00
138	.....	362	Do.	"	15 00
134	.....	363	Do.	"	28 35
130	.....	364	Do.	"	27 75
131	.....	365	Do.	"	17 25
135	.....	366	Do.	"	86 65
137	.....	367	T. L. Blalock	3rd,	71 45
133	.....	368	J. L. Cunninghim.....	"	60 00
116	.....	369	B. W. Kilgore	"	50 00
125	.....	370	Paul Monk.....	"	25 00
140	.....	471	A. Williams & Co.....	4th,	10 31
144	.....	372	Carlos Reese & Co.....	5th,	4 05
147	.....	373	Jas. L. Tobin	"	4 50
148	.....	374	J. H. Bunnell & Co.....	"	2 13
151	.....	375	Emil Greiner.....	"	6 69
153	.....	376	Eimer & Amend	"	75 66
152	.....	377	Baker Bros. & Co.....	"	24 24
141	.....	378	Morgan Envelope Co.....	"	62 88
142	.....	379	N. V. Randolph & Co.....	"	7 50
126	.....	380	Va. Paper Co.....	"	9 00
145	.....	381	Hermann Baumgarten.....	"	3 55
150	.....	382	A. B. Dick Co.....	"	3 60
149	.....	383	Whitall, Tatum & Co.....	"	19 22
143	.....	384	Chas. Schribner's Sons.....	"	10 00
84 154	.....	385	F. E. Emry.....	6th,	60 00
160	.....	386	J. L. Cunninghim	14th,	50 00
170	.....	387	Do.	17th,	28 85

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.		No. in order of payment.	To whom paid.	Date of payment.	Amount.
Sta. No.	Aud. No.				
155	.....	388	J. L. Cunninghim.....	17th,	5 75
157	.....	389	Do.	"	4 50
169	.....	390	Do.	"	46 15
159	.....	391	Do.	"	305 27
158	.....	392	Do.	"	20 00
156	.....	393	Do.	"	54 81
167	.....	394	B. Westerman & Co.....	"	56 83
156	.....	395	Eimer & Amend	"	7 40
165	.....	396	R. J. Powell.....	18th,	89 98
168	.....	397	Raleigh Oil Mills & Fert. Co.	19th,	40 00
161	.....	398	L. R. Wyatt..	"	6 45
164	.....	399	John S. Keith.....	"	16 00
162	.....	400	W. C. & A. B. Stronach....	"	5 00
163	.....	401	Crowder & Rand.....	20th,	65 54
171	.....	402	Frank E. Emry.....	21st,	50 00
					$1,839 97

We, the undersigned committee, appointed by the General Assembly, have examined the entries with the vouchers of the experiment station of the N. C. department of agriculture, on pages 26 to 36, both inclusive, and, finding them to agree, have cancelled the same.

December, 1891.

W. D. TURNER,
J. J. LONG,
ZEB. V. WALSER,
W. H. McCLURE,
J. Q. A. BRYAN,
} *Committee.*

85 *Paid on Account of Support of the No. Ca. Experiment Station.*

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
173	1	B. W. Kilgore	Dec. 1st, '91	$100 00
174	2	F. B. Carpenter	"	91 66
178	3	Gerald McCarthy	"	125 00
197	4	J. L. Cunninghim.....	"	4 00
188	5	Do.	"	13 00
189	6	Do.	"	9 30
190	7	J. L. Cunninghim.....	"	40 00
187	8	Do.	"	62 50
193	9	Mrs. A. E. Temple.....	2nd,	40 00
180	10	B. S. Skinner	"	66 66
183	11	T. K. Bruner	"	16 66
181	12	J. L. Cunninghim.....	"	50 00
199	13	Do.	"	15 70
191	14	Do.	"	25 00
192	15	Do.	"	60 00

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
182	16	Paul Monk	2nd,	$25 00
176	17	J. S. Meng	"	66 66
172	18	H. B. Battle	"	208 34
185	19	Wm. Whitaker	"	25 00
186	20	Willie Carroll	"	16 66
139	21	Raleigh Gas Co.	"	7 00
198	22	Frank E. Emry	"	30 00
177	23	Do.	"	125 00
184	24	Alexander Rhodes	"	50 00
179	25	W. F. Massey	3rd,	83 33
196	26	Thos. H. Briggs & Sons	4th,	15 20
195	27	Peter Henderson & Co.	5th,	7 25
194	28	Raleigh Gas Co	"	15 60
175	29	T. L. Blalock	9th,	70 00
206	30	Henry J. Green	16th,	10 70
207	31	H. H. Ballard	"	5 00
208	32	Eimer & Amend	"	11 15
209	33	The Steven T. Smith Co	"	4 50
217	34	J. L. Cunninghim	"	50 00
203	35	Gerald McCarthy	"	8 50
205	36	J. C. S. Lumsden	17th,	16 50
215	37	Brewster H'dware Co	18th,	14 55
214	38	Crowder & Rand	"	7 24
213	39	Raleigh Oil Mills & Fert. Co	"	55 01
202	40	J. L. Cunninghim	"	162 05
201	41	Do.	"	257 25
212	42	Do.	"	8 25
216	43	Do.	"	20 89
200	44	Do.	"	5 00
204	45	Do.	"	16 00
210	46	J. W. Cobb	19th,	3 65
218	47	Frank E. Emry	"	50 00
219	48	Do.	"	75 00
86				
211	49	W. U. Tel. Co.	Dec. 21st,	3 09
220	50	H. B. Battle	31st,	208 33
				$2,457 18

January, 1892.

223	51	T. L. Blalock	2d,	75 00
222	52	F. B. Carpenter	"	91 66
229	53	J. L. Cunninghim	"	50 00
227	54	W. F. Massey	"	83 33
232	55	Alexander Rhodes	"	50 00
233	56	Wm. Whitaker	"	25 00
231	57	T. K. Bruner	"	16 66
230	58	Paul Monk	"	25 00
221	59	B. W. Kilgore	"	100 00
228	60	B. S. Skinner	4th,	66 66
235	61	Frank E. Emry	"	60 00
224	62	J. S. Meng	5th,	66 66
226	63	Gerald McCarthy	"	125 00

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
234	64	John I. Ferrall	6th,	11 66
225	65	Frank E. Emry	9th,	125 00
236	66	Mrs. A. E. Temple	12th,	20 00
251	67	H. B. Battle	18th,	104 16
252	68	A. F. Bowen	20th,	20 00
240	69	Edwards & Broughton	"	78 38
239	70	J. L. Cunninghim	"	60 00
248	71	Do.	"	44 39
247	72	Do.	"	24 60
246	73	Do.	"	13 93
238	74	Do.	"	14 00
237	75	Do.	"	24 95
250	76	Library Bureau	21st,	33 70
243	77	The N. C. Car Co.	25th,	61 65
245	78	Raleigh Gas Co	"	20 80
244	79	Phil. H. Andrews	"	38 25
249	80	W. H. & R. S. Tucker & Co.	"	46 55
242	81	Williamson & Upchurch	29th,	30 00
241	82	Raleigh Oil Mills & Fert. Co	"	9 85
				$1,616 84
		February.		
266	83	Wm. Whitaker	1st,	30 00
255	84	F. B. Carpenter	"	91 66
264	85	T. K. Bruner	"	16 66
262	86	J. L. Cunninghim	"	50 00
263	87	Paul G. Monk	"	30 00
256	88	T. L. Blalock	"	75 00
257	89	J. S. Meng	"	66 66
254	90	B. W. Kilgore	"	100 00
253	91	H. B. Battle	"	104 16
261	92	B. S. Skinner	2nd,	66 66
265	93	Alexander Rhodes	"	50 00
260	94	W. F. Massey	"	83 33
87				
259	95	Gerald McCarthy	2d,	125 00
266½	96	John I. Terrell	"	16 66
276	97	F. E. Emry	3rd,	50 00
274	98	Geo. Tait & Sons	"	4 35
268	99	James L. Tobin	"	3 50
269	100	Baker & Adamson	"	75 00
270	1	Eimer & Amend	"	135 70
271	2	A. B. Dick Co	"	5 70
272	3	The American News Co.	"	9 75
267	4	Mrs. A. E. Temple	"	20 00
273	5	J. L. Cunninghim, sec'y	4th,	12 63
275	6	Raleigh Gas Co	6th,	23 80
258	7	F. E. Emry	8th,	125 00
279	8	J. L. Cunninghim, sect	16th,	54 50
280	9	Do.	"	40 00
277	110	H. B. Battle	16th,	104 16
278	1	Herman Baumgarten	"	3 50

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
284	2	Rocky Mount Iron Works	16th,	5 13
287	3	J. T. Lovitt & Co	"	8 85
281	4	A. F. Bowen	18th,	20 00
282	5	Frank E. Emry	"	70 00
283	6	Do.	"	40 00
288	7	J. C. S. Lumsden	19th,	16 65
285	8	W. B. Hutchings	20th,	20 65
286	9	Raleigh Oil Mills & Fert. Co	"	7 05
296	120	Gerald McCarthy	29th,	125 00
289	120½	Raleigh Telephone Exchange	23rd,	120 00
				$2,007 27

March.

294	121	J. S. Meng	1st,	66 66
290	2	H. B. Battle	"	104 16
300	3	Paul G. Monk	"	30 00
298	4	B. S. Skinner	"	66 66
301	5	T. K. Bruner	"	16 66
293	6	T. L. Blalock	"	75 00
292	7	F. B. Carpenter	"	91 66
299	8	J. L. Cunninghim	"	50 00
303	9	William Whitaker	"	30 00
306	130	J. L. Cunninghim, sect.	"	5 88
305	1	Do.	"	29 50
315	2	Mrs. A. E. Temple	"	20 00
291	3	B. W. Kilgore	2nd,	100 00
302	4	Alxander Rhodes	"	50 00
295	5	Frank E. Emry	"	125 00
304	6	John I. Ferrell.	"	16 66
312	7	Levy Type Co	3rd,	5 50
313	8	The Fairbanks Co	"	2 55
311	9	Vermont Farm Machine Co	"	37 13
310	140	Herendeen Mfg. Co	"	15 00
88				
309	1	Syracuse Chilled Plow Co	3rd,	6 94
308	2	Wiard Plow Co	"	8 88
307	3	J. L. Cunninghim, sect	4th,	6 21
297	4	W. F. Massey	5th,	83 33
314	5	Raleigh Gas Co	11th,	29 80
331	6	R. Hoe & Co	16th,	585 14
326	7	Syracuse Chilled Plow Co	"	9 00
334	8	Berry O. Kelly	"	23 43
319	9	Eimer & Amend	"	47 89
320	150	A. E. Foote, M. D.	"	6 70
330	1	T. W. Wood & Sons	"	8 11
328	2	Morgan Envelope Co	"	15 75
318	3	J. L. Cunninghim	17th,	50 00
317	4	A. F. Bowen	"	25 00
316	5	H. B. Battle	"	104 16
321	6	J. L. Cunninghim, sec't'y	18th,	422 18
329	7	Raleigh Telephone Exchange	21st,	11 00
332	8	Frank E. Emry	"	90 00

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
323	9	Thos. H. Briggs & Sons	21st,	8 35
327	160	Jones & Powell	"	37 50
324	1	Raleigh Oil Mills & Fert. Co	"	5 58
322	2	Julius Lewis & Co	"	6 00
325	3	L. R. Wyatt	22nd,	11 95
333	4	J. L. Cunninghim, sect	25th,	35
				$2,575 92
		April.		
339	165	J. S. Meng	5th,	66 66
336	6	B. W. Kilgore	"	100 00
347	7	Alexander Rhodes	"	50 00
341	8	Gerald McCarthy	"	125 00
348	9	Wm. Whitaker	"	30 00
338	170	T. L. Blalock	"	75 00
344	1	J. L. Cunninghim	"	50 00
345	2	Paul G. Monk	"	30 00
337	3	F. B. Carpenter	"	91 66
340	4	Frank E. Emry	"	125 00
354	5	J. L. Cunninghim, sect	6th,	19 00
356	6	Do.	"	40 02
363	7	Do.	"	25 00
351	8	Eimer & Amend	"	25 27
352	9	Brandon Printing Co	"	51 50
353	180	A. B. Dick Co	"	5 40
357	1	Carolina Rice Milling Co	"	54 00
89				
365	2	The Weaver Mailing Env. & Box Co	6th,	9 47
355	3	A. E. Foote, M. D	"	20 20
350	4	A. E. Temple	"	20 00
358	5	Thomas & Maxwell	"	3 00
349	6	John I. Ferrell	7th,	16 66
346	7	T. K. Bruner	"	16 66
364	8	J. L. Cunninghim, sect	"	14 54
362	9	Frank E. Emry	8th,	30 00
343	190	B. S. Skinner	"	66 66
361	1	Ellington & Royster	"	7 12
335	2	H. B. Battle	"	104 16
366	3	W. B. Hutchings	9th,	21 95
344	4	W. F. Massey	11th,	83 33
360	5	Raleigh Gas Co	"	35 20
380	6	A. T. Bowen	20th,	25 00
359	7	A. G. Rhodes & Co	"	8 50
373	8	A. B. Seymour	"	7 50
382	9	Farmers' Seed Co	"	6 75
371	200	The Northern Distillery Co	"	20 70
370	1	Eimer & Amend	"	18 69
369	2	W. S. Powell & Co	"	3 92
368	3	Levy Type Co	"	6 50
367	4	C. G. Crawford	"	5 00
374	5	F. E. Emry	22nd,	80 00
376	6	L. R. Wyatt	"	7 50

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
375	7	Julius Lewis & Co.	23rd,	4 97
378	8	Latta & Myatt	"	26 18
384	9	Edwards & Broughton	25th,	191 41
385	210	W. F. Massey	"	20 00
381	1	J. L. Cunninghim, sec't'y	26th,	13 35
372	2	E. F. Wyatt	27th,	7 50
				$1,865 93
		May.		
397	213	T. K. Bruner	2nd,	16 69
395	4	J. L. Cunninghim	"	50 00
396	5	Paul G. Monk	"	30 00
400	6	John I. Terrell	"	16 66
401	7	Wm. Whitaker	"	30 00
391	8	F. E. Emry	"	125 00
389	9	T. L. Blalock	"	75 00
388	220	F. B. Carpenter	"	91 66
387	1	B. W. Kilgore	"	100 00
386	2	H. B. Battle	"	208 33
390	3	J. S. Meng	"	66 66
399	4	Mrs. A. E. Temple	"	20 00
394	5	B. S. Skinner	3rd,	66 66
398	6	Alexander Rhodes	"	50 00
392	7	Gerald McCarthy	"	125 00
383	8	J. L. Cunninghim	"	5 97
90				
393	9	W. F. Massey	5th,	83 33
411	230	F. E. Emry	17th,	55 00
379	1	J. L. Cunninghim, sec't'y	24th,	60 00
414	2	Allen & Cram	"	21 45
407	3	F. E. Emry	"	50 00
415	4	John S. Keith	"	5 00
404	5	Hansom Bros	"	4 25
405	6	Levy Type Co.	"	7 45
410	7	R. Hoe & Co.	"	37 63
412	8	Ass. Am. Ag'l & Exp. Sta.	"	10 00
417	9	The Globe Co	"	24 00
402	240	Baker & Adamson	"	11 32
403	1	A. H. Raffe & Co.	"	67 75
416	2	Raleigh Oil Mills, &c	25th,	13 89
408	3	W. H. & R. S. Tucker & Co.	"	12 75
421	4	A. F. Bowen	"	25 00
420	5	F. E. Emry	"	45 00
419	6	J. L. Cunninghim	"	7 74
409	7	Caraleigh mills	26th,	15 00
413	8	R. M. Andrews	"	11 20
418	9	Thos. H. Briggs & Sons	30th,	15 20
				$1,660 56

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
		June.		
433	250	T. K. Bruner	1st,	16 66
431	1	J. L. Cunninghim	"	50 00
436	2	Wm. Whitaker	"	30 00
432	3	Paul G. Monk	"	30 00
424	4	F. B. Carpenter	"	91 66
423	5	B. W. Kilgore	"	100 00
426	6	Jas. S. Meng	"	66 66
422	7	H. B. Battle	"	208 33
434	8	A. Rhodes	2nd,	50 00
427	9	F. E. Emry	"	125 00
438	260	Edwards & Broughton	"	280 41
429	1	W. F. Massey	"	83 33
428	2	Gerald McCarthy	3rd,	125 00
430	3	B. S. Skinner	"	66 66
425	4	T. L. Blalock	4th,	75 00
440	5	Edwards & Broughton	24th,	134 64
406	6	Raleigh Gas Co	10,	39 40
439	7	H. B. Battle	13th,	400 00
437	8	John I. Ferrell	16th,	16 66
441	9	J. L. Cunninghim	29th,	320 39
				$2,309 80
91		July, 1892.		
451	270	J. L. Cunninghim	1st,	$50 00
453	1	T. K. Bruner	"	16 74
442	2	H. B. Battle	"	208 39
443	3	B. W. Kilgore	"	100 00
455	4	Wm. Whitaker	"	30 00
454	5	Alexander Rhodes	"	50 00
447	6	F. E. Emry	"	125 00
7	7	J. L. Cunninghim	2nd,	223 89
452	8	Paul G. Monk	"	30 00
446	9	J. S. Meng	"	66 72
444	280	F. B. Carpenter	"	91 74
445	1	T. L. Blalock	"	75 00
449	2	W. F. Massey	"	83 38
450	3	B. S. Skinner	"	66 72
6	4	R. Hoe & Co.	5th,	36 44
5	5	A. H. Roffe & Co.	"	6 00
4	6	Norman W. Henley	"	6 02
3	7	Schneider Bros.	"	18 00
2	8	Emil Greiner	"	21 13
1	9	Eimer & Amend	"	14 63
448	290	Gerald McCarthy	"	125 00
456	291	John I. Ferrall	5th,	16 74
8	2	J. L. Cunninghim	9th,	307 71
9	3	Raleigh Gas Co.	11th,	44 60
377	4	Phil. H. Andrews	12th,	7 75
435	5	Mrs. A. E. Temple	18th,	20 00
34	6	J. L. Cunninghim	23rd,	35 00
37	7	Do.	"	40 00

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
35	8	J. L. Cunninghim	23rd,	40 00
38	9	Do.	"	45 00
24	300	Do.	"	75 00
11	1	Do.	"	20 35
14	2	Do.	"	17 87
21	3	Do.	"	291 35
36	4	Do.	"	25 00
20	5	Do.	"	22 00
30	6	Do.	"	12 00
31	7	Do.	"	28 00
29	8	Jones, of Binghamton	"	8 73
18	9	A. H. Roffe & Co.	"	6 00
19	310	The Casino Art Co.	"	2 09
10	1	Eimer & Amend	"	10 19
13	2	The Pomeroy Duplicator Co.	"	3 50
23	3	W. F. Massey	25th,	30 00
17	4	J. L. Cunninghim	"	60 00
16	5	A. F. Bowen	"	25 00
12	6	Alfred Williams & Co.	26th,	2 75
25	7	The N. C. Cotton Oil Co.	27th,	12 00
33	8	Williamson & Upchurch	"	5 82
26	9	Brewster Hdw. Co.	"	6 50
32	320	Raleigh Tel. Ex.	"	48 00
92				
28	321	R. M. Andrews	27th,	5 45
27	2	L. R. Wyatt	29th,	31 10
15	3	The N. C. Car Co.	"	21 60
42	4	T. L. Blalock	30th,	83 33
				$2,855 23

August.

49	325	Paul G. Monk	1st,	30 00
44	6	F. E. Emry	"	125 00
53	7	Alexander Rhodes	"	50 00
47	8	B. S. Skinner	"	100 00
51	9	Wm. Whitaker	"	30 00
43	330	J. S. Meng	"	75 00
41	1	F. B. Carpenter	"	91 66
45	2	Gerald McCarthy	2nd,	125 00
50	3	T. K. Bruner	3rd,	16 66
48	4	J. L. Cunninghim	4th,	50 00
22	5	F. E. Emry	5th,	100 00
52	6	John I. Ferrell	6th,	16 66
46	7	W. F. Massey	"	83 33
40	8	B. W. Kilgore	9th,	100 00
39	9	H. B. Battle	12th,	208 33
69	340	J. L. Cunninghim	18th,	31 25
65	1	Do.	20th,	21 51
58	2	F. E. Emry	"	40 00
70	3	Raleigh Gas Co.	"	19 00
54	4	Eimer & Amend	"	10 40
53½	5	Morgan Envelope Co.	"	39 09

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
66	6	D. H. Roe & Co.	20th,	9 08
67	7	R. Hoe & Co.	"	15 00
59	8	Crowder & Rand	22nd,	18 03
61	9	Edwards & Broughton	"	114 74
60	350	Raleigh Oil Mill & F. Co.	23rd,	15 99
63	1	J. L. Cunninghim	"	50 00
62	2	Do.	"	47 90
68	3	Do.	"	25 67
71	4	Do.	"	24 65
56	5	Do.	"	5 80
64	6	Do.	24th,	70 35
55	7	A. F. Bowen	"	22 12
57	8	F. E. Emry	26th,	90 00
72	9	H. B. Battle, director	30th,	16 50
				$1,888 72
		September.		
73	360	H. B. Battle	2nd,	208 33
82	1	J. L. Cunninghim	"	50
77	2	J. S. Meng	"	75 00
78	3	F. E. Emry	"	125 00
93				
74	364	B. W. Gilgore	2nd,	100 00
83	5	Paul G. Monk	"	30 00
88	6	W. F. Massey	"	30 00
80	7	Do.	"	83 33
86	8	Wm. Whitaker	"	30 00
87	9	John I. Ferrell	3rd,	16 66
84	370	T. K. Bruner	"	16 66
85	1	Alex. Rhodes	"	50 00
81	2	B. S. Skinner	"	100 00
79	3	Gerald McCarthy	"	125 00
75	4	F. B. Carpenter	8th,	91 66
76	5	T. L. Blalock	10th,	83 33
89	6	Mrs. A. E. Temple	13th,	20 00
108	7	T. L. Eberhardt	17th,	140 00
99	8	A. F. Bowen	19th,	45 00
91	9	H. B. Battle	"	104 16
107	380	Royal & Borden	"	6 00
111	1	B. W. Kilgore	"	33 25
106	2	Thos. H. Briggs & Sons	"	7 55
110	3	Raleigh Tel. Exchange	"	11 00
102	4	F. E. Emry	"	60 00
94	5	A. Williams & Co.	20th,	5 40
93	6	A. F. Bowen, sec.	21st,	21 50
96	7	Do.	"	18 00
97	8	Do.	"	20 00
98	9	Do.	"	16 80
105	390	A. B. Seymour	22nd,	7 18
103	1	Geo. G. Kerr	"	30 60
101	2	Va. Paper Co.	"	11 24
100	3	A. H. Rosse & Co.	"	6 25

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
95	4	Levy Type Co.	22nd,	9 50
92	5	Eimer & Amend	"	14 08
90	6	Richard King & Co.	"	22 25
104	7	R. J. Powell	24th,	23 40
109	8	Raleigh Gas Co.	26th,	13 60
112	9	A. F. Bowen, sec.	29th,	12 55
				$1,874 28
		October, 1892.		
129	400	A. F. Bowen, sec't'y	3rd,	40 00
122	1	Do.	"	35 00
128	2	John J. Ferrell	"	16 66
126	3	Alexander Rhodes	"	50 00
115	4	F. B. Carpenter	"	91 66
119	5	Gerald McCarthy	"	125 00
127	6	Wm. Whitaker	"	30 00
121	7	B. S. Skinner	"	100 00
118	8	F. E. Emry	"	125 00
117	9	J. S. Meng	"	75 00
114	410	B. W. Kilgore	"	100 00
125	1	T. K. Bruner	"	16 66
123	2	Miss Mamie Birdsong	"	17 50
94				
113	413	H. B. Battle	4th,	104 17
116	4	T. L. Blalock	"	83 33
120	5	W. F. Massey	"	83 33
124	6	C. D. Jones	"	20 00
130	7	H. B. Battle	15th,	75 00
				$1,188 31
		November, 1892.		
143	418	Alexander Rhodes	2nd,	50 00
137	9	W. F. Massey	"	83 33
135	420	F. E. Emry	"	125 00
133	1	F. B. Carpenter	"	91 66
141	2	C. D. Jones	"	20 00
144	3	Wm. Whitaker	"	30 00
134	4	Jas. S. Meng	"	75 00
132	5	B. W. Kilgore	"	100 00
138	6	B. S. Skinner	3rd,	100 00
139	7	A. F. Bowen	"	35 00
131	8	H. B. Battle	"	133 33
142	9	T. K. Bruner	4th,	16 66
136	430	Gerald McCarthy	"	125 00
145	1	John I. Ferrell	5th,	16 66
140	2	Miss Mamie Nirdsong	7th,	17 50
				$1,019 14

Paid on Account of Support of the No. Ca. Experiment Station—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of payment.	Amount.
150	433	A. F. Bowen, sec't'y	25th,	5 00
149	4	Do.	"	18 23
148	5	Do.	"	18 00
158	6	Do.	"	16 00
159	7	Do.	"	28 05
160	8	Do.	"	6 00
161	9	Do.	"	227 24
162	440	Do.	"	31 50
169	1	Do.	"	17 55
170	2	Do.	"	25 00
168	3	Raleigh Gas Co.	"	18 80
167	4	F. E. Emry	"	30 00
163	5	Do.	"	85 00
152	6	Lulius Lewis	"	28 40
153	7	J. C. S. Lumsden	"	27 95
156	8	A. F. Bowen, sec	"	18 40
151	9	The N. C. Car Co.	26th,	7 20
166	450	R. J. Powell	29th,	23 40
165	1	Ellington, Royster & Co.	"	7 34
157	2	Eimer and Amend	30th,	11 22
155	3	D. H. Roe & Co.	"	11 03
154	4	Wm. P. Walters & Son	"	11 40
147	5	Peter Henderson & Co.	"	71 93
146	6	Bryan W. Halsted	"	10 00
				$754 64

95 We, the undersigned committee, appointed by the General Assembly, have examined the entries with the vouchers of the experiment station of the North Carolina department of agriculture, and, finding them to be correct, have cancelled the same.

Raleigh, No. Ca., December, 1892.

W. D. TURNER, *Chm.*,
ZEB. V. WALSER,
J. J. LONG,
W. H. McCLURE,
J. Q. A. BRYAN,
} *Committee.*

96 *Paid on Account of Support of Experiment Station, Department of Agriculture.*

No. of voucher.	No. in order of payment.	To whom paid.	Date of pay't.	Amount.
175	1	B. W. Kilgore	Dec. 1st, '92	$100 00
177	2	Jas. S. Meng	"	75 00
178	3	R. E. Noble	"	66 66
174	4	H. B. Battle	"	208 33
187	5	Alex. Rhodes	"	50 00
176	6	F. B. Carpenter	"	91 66
179	7	F. E. Emry	"	125 00
188	8	Wm. Whitaker	"	30 00
183	9	A. F. Bowen	"	40 00
185	10	C. D. Jones	"	20 00
182	11	B. S. Skinner	"	100 00
180	12	Gerald McCarthy	2nd,	125 00
164	13	W. F. Massey	"	35 00
184	14	Miss Mamie Nirdsong	"	17 50
181	15	W. F. Massey	6th,	83 33
186	16	T. K. Bruner	"	16 66
173	17	A. F. Bowen	"	22 18
171	18	Do.	"	101 94
172	19	Do.	"	52 04
189	20	Jno. I. Tercell	8th,	16 66
190	21	A. F. Bowen	24th,	181 98
				$1,558 94

January, 1893.

200	22	A. F. Bowen	10th,	50 00
204	23	Alexander Rhodes	"	50 00
193	24	F. P. Carpenter	"	91 66
203	25	T. K. Bruner	"	16 66
191	26	H. B. Battle	"	208 33
194	27	Jas. S. Meng	"	83 33
192	28	B. W. Kilgore	"	100 00
195	29	R. E. Noble	"	66 66
202	30	Chas. E. Jones	11th,	12 50
199	31	B. S. Skinner	"	100 00
197	32	Gerald McCarthy	"	125 00
196	33	F. E. Emry	12th,	125 00
206	34	Jno. I. Terrell	"	16 66
205	35	Wm. Whitaker	"	30 00
201	36	Miss Mamie Birdsong	13th,	17 50
198	37	W. F. Massey	16th,	83 33
214	38	A. F. Bowen	20th,	60 00
216	39	Thos. H. Briggs	"	17 84
218	40	Raleigh Gas Co	"	54 00
209	41	A. F. Bowen, sec't'y	"	60 00
213	42	Do.	"	66 00
217	43	Do.	"	18 00
208	44	Do.	"	253 87
215	45	Do.	"	258 70
207	46	Do.	"	294 75

Paid on Account of Support of Experiment Station, etc.—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of pay't.	Amount.
97				
210	47	Eimer & Amend	Jan. 21st, '93	50 13
212	48	John F. Diemer	"	18 82
211	49	The Pomeroy Duplicator Co.	"	7 40
				$2,336 14
		February.		
223	50	R. E. Noble	Feb. 1st, '93	66 66
220	51	B. W. Kilgore	"	100 00
235	52	A. F. Bowen, sec't'y	"	35 00
222	53	Jas. S. Meng	"	83 33
237	54	A. F. Bowen	"	167 40
219	55	H. B. Battle	"	208 33
231	56	T. K. Bruner	"	16 66
228	57	A. F. Bowen	"	50 00
233	58	Wm. Whitaker	"	30 00
221	59	F. B. Carpenter	"	91 66
236	60	F. E. Emry	2nd,	60 00
224	61	Do.	"	125 00
227	62	B. S. Skinner	"	100 00
232	63	Alex. Rhodes	"	50 00
230	64	Chas. D. Jones	"	12 50
226	65	W. F. Massey	3rd,	83 33
225	66	Gerald McCarthy	"	125 00
234	67	John I. Ferrell	8th,	16 66
229	68	Mamie Birdsong	"	17 50
248	69	F. P. Brown	18th,	20 00
249	70	A. F. Bowen, sec't'y	"	65 00
245	71	Do.	"	20 00
259	72	Raleigh Telephone Ex	20th,	120 00
246	73	Raleigh Sta. Co	"	27 30
256	74	A. F. Bowen, sec't'y	"	8 63
250	75	Do.	"	6 10
247	76	Do.	"	13 66
244	77	Do.	"	8 50
255	78	Do.	"	135 50
251	79	F. E. Emry	24th,	90 00
260	80	A. F. Bowen, sec't'y	27th,	402 84
252	81	F. E. Emry	"	48 00
258	82	A. H. Roffe & Co	"	68 50
243	83	Eimer & Amend	"	40 83
242	84	Henry Heil Chemical Co.	"	30 72
241	85	Whitall, Tatum & Co	"	5 78
240	86	Emil Greiner	"	6 80
239	87	Jas. L. Tobin	"	9 50
238	88	Baker & Adamson	"	23 64
253	89	N. C. Cotton Oil Co	28th,	69 06
257	90	Raleigh Gas Co.	"	33 20
				$

Paid on Account of Support of Experiment Station, etc.—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of pay't.	Amount.
98		March, 1893.		
262	91	B. W. Kilgore	M'ch 1st, '93	100 00
254	92	R. E. Noble	"	66 66
261	93	H. B. Battle	"	208 33
274	94	Wm. Whitaker	"	30 00
269	95	B. S. Skinner	"	100 00
263	96	F. B. Carpenter	"	91 66
270	97	A. F. Bowen, sec't'y	"	50 00
271	98	Miss Mamie Birdsong	"	23 75
265	99	M. S. McDowell	2nd,	50 00
267	100	Gerald McCarthy	"	125 00
266	1	F. E. Emry	"	125 00
273	2	Alex. Rhodes	"	50 00
268	3	W. F. Massey	3rd,	83 33
275	4	Jno. I. Terrell	7th,	16 66
272	5	T. K. Bruner	8th,	16 66
254	6	The State Penitentiary	16th,	5 60
276	7	A. F. Bowen, sec't'y	20th,	19 52
278	8	Do.	"	22 35
280	9	Do.	"	8 00
292	110	Do.	"	11 00
281	1	Do.	"	86 58
294	2	Do.	"	56 25
293	3	Do.	"	149 94
287	4	Do.	"	56 00
279	5	Do.	"	62 00
290	6	T. L. Eberhardt	"	7 50
283	7	F. E. Emry	"	95 00
284	8	Do.	"	35 00
286	9	T. W. Wood & Son	"	21 00
285	120	Henry Nungesser	"	21 73
277	1	Eimer & Amend	"	62 99
288	2	Bausch, Lomb Co	"	43 38
282	3	W. F. Massey	22nd,	30 00
291	4	Raleigh Gas Co	"	50 20
289	5	G. H. Glass	24th,	6 00
				1,987 09
		April, 1893.		
299	126	M. S. McDowell	3rd,	70 00
302	7	W. F. Massey	"	83 33
305	8	Miss Mamie Birdsong	"	35 00
304	9	A. F. Bowen	"	50 00
301	130 00	Gerald McCarthy	"	125 00
308	1	Wm. Whitaker	"	30 00
297	2	F. B. Carpenter	"	91 66
300	3	F. E. Emry	"	125 00
307	4	Alex. Rhodes	"	50 00
303	5	B. S. Skinner	"	100 00
296	6	B. W. Kilgore	"	100 00
298	7	R. E. Noble	"	66 66
295	8	H. B. Battle	"	208 33
309	9	John I. Ferrell	4th,	16 66

Paid on Account of Support of Experiment Station, etc.—Continued.

No. of voucher.	No. in order of payment.	To whom paid.	Date of pay't.	Amount.
99				
306	140	T. K. Bruner	Ap'l 4th, '93	16 66
321	1	Wiard Plow Co	15th,	12 98
324	2	Syracuse Chilled Plow Co.	"	12 80
313	3	Baker & Adamson	"	36 03
311	4	Eimer & Amend	"	22 42
310	5	Whitall, Tatum & Co.	"	26 57
325	6	W. F. Massey	17th,	12 50
315	7	A. F. Bowen, sec't'y	"	20 00
316	8	Do.	"	60 00
319	9	Edwards & Broughton	"	125 00
320	150	Ellington, Royster & Co.	18th,	31 91
318	1	A. F. Bowen, sec't'y	"	5 00
317	2	Do.	"	10 00
314	3	Do.	"	8 00
323	4	N. C. Cotton Oil Co.	19th,	24 69
326	5	H. B. Battle	"	104 16
322	6	Chas. F. Lumsden & Co.	20th,	55 31
312	7	Thomas S. Stevenson	24th,	31 25
				1,766 92

100 MAY 26TH, 1893.

Col. JOHN ROBINSON, being duly sworn, says:

Q. I believe you are commissioner of agriculture?

A. Yes, sir; I am so regarded and have been holding the office for 6 years.

Q. From what source is the revenue of the department now derived?

A. From a tonnage tax on fertilizers.

Q. Has it any other source of revenue?

A. None whatever.

Q. What was its source of revenue before the act of 1891?

A. A license tax on fertilizers.

Q. Do you know how many employees there are in the board of agriculture?

A. Yes, sir; the commissioner of agriculture, who gets a salary of $1,850.00; the secretary, T. K. Bruner, $1,300; the curator of the muzeum, T. C. Harris, $900.00, and we have two constant inspectors, Geo. S. Terrell and P. C. Ennis, at salaries of $900.00 each; that is all we have constantly employed. We employ other men as we need them for the purpose of inspecting fertilizers. We had last year three besides these two inspectors employed.

Q. Who were they and how long were they employed?

A. A Mr. Green, a Mr. Gill, and a Mr. Oates. They were employed at $75 a month when they were at work.

Q. Give the approximate time they were employed during the present season.

A. About four months.

Q. I understand they are not now engaged?

A. No, sir.

Q. What other officers?

A. We have a servant, like other State officers, at $25 a month.

Q. Do you know how many chemists are employed in the analysis of fertilizers?

A. I cannot say positively. I know the young men when I see them, but do not know how many there are.

Q. Have you a printed statement of the receipts and ex-
101 penditures of your department for the last two fiscal years?

A. Yes, sir.

Q. Please produce one and let it be filed as an exhibit.

A. I file a report containing a statement for both years. All items in here dated before January 21st, 1891, are under the old license tax and not under the tonnage system. We publish these reports every year (Report 5, marked Exhibit D).

Q. You have doubtless from time to time inspected the books of the treasurer—the books we were examining on yesterday?

A. I have not, but the disbursements in Exhibit B and the receipts are taken from that book.

Q. Have you a similar report for the years 1887–'88 and 1889–'90—in fact, from the time you came into the office?

A. Yes, sir.

Q. Please furnish a copy of them as a part of your deposition.

(Objected to as immaterial.)

(By the JUDGE: Admitted.)

A. I now produce reports for 1887–'88 and 1889–'90, and they are filed and marked "Exhibits E, F, & G" respectively.

Q. Have you any means of ascertaining the number of tons of commercial fertilizers that have been sold in North Carolina during the present year?

A. No, sir; not accurately. I can approximate it.

Q. How do you arrive at it?

A. By the number of tags sold.

Q. What is the number of tags sold this year?

A. I cannot tell, but I can approximate. I can find out from the books, but it will take some time to do it. The number of tags has been larger than we anticipated on account of the sale of cotton seed by the farmers and their buying fertilizers instead. Cotton seed brought from 30 to 33c. per bushel, and those convenient to shipping points sold and bought fertilizers. As I said, the sale of tags has been larger on that account.

Q. How many tags, according to your best information,
102 have been sold this year?

A. I can only tell you the amount of money we have received.

Q. That would indicate it exactly?

A. Yes, sir. I do not know the exact amount of money, but it is between $32,000 and $33,000. I have the receipts, but have not added them up.

(Objected to as immaterial.)

(By the JUDGE: Admitted.)

Q. If there were $32,500 of money received and the tags have been used, that would indicate that 130,000 tons have been sold, would it not?

A. Yes, sir; there is an unusual number of brands on sale in the State—over 425. It increases every year. Before the tonnage system there were only 75 or 80 brands. Since then it has grown every year. Last year there were three hundred and ninety-six, and it has increased since.

Q. What is the proportion of the tons of fertilizers sold in the last half of the year as compared with the first half?

A. It is very much smaller. Our receipts for tags in the fall seldom amount to over $2,000.00. Last year they were larger than usual on account of the large amount of fertilizers being used for wheat, and the receipts last fall were about $2,500.00.

Q. Do you know what the receipts for sales were for May and June of last year?

A. Very little, if anything. We never sell anything in June. The treasurer's books showed you that on yesterday.

Q. Will you please turn to your treasurer's book and state whether there were any receipts from licenses during the months of December, 1890, and January, 1891—that is, unless you can state without reference to the books.

A. We keep no books in here. The books are in the treasurer's office.

Q. Can you refer to your receipts for the two months and answer the question?

A. The licenses were issued by the State treasurer upon my written order, and when I received the money I would turn
103 it over to the treasurer without taking a receipt from him.

Q. What are Mr. Harris' duties?

A. He is curator of the muzeum.

Q. Have you any means of ascertaining what was the total number of tons of fertilizers sold in North Carolina during 1891?

A. Yes, sir; we sold more than we have in any other year since the tonnage system.

Q. Would it not be four times the number of dollars received?

A. Yes, sir.

Q. Do you make the same answer as to the year 1892?

A. Yes, sir.

Q. Have you any means of ascertaining the number of tons sold in 1890?

(Objection.)

A. No means at all.

(By the JUDGE: Admitted.)

Q. Have you any means of ascertaining the number previous to 1890?

(Objection.)

A. That will be guesswork. It was under the license system, and a man paid for selling a certain brand and he sold any number of tons he pleased.

Q. Can you approximate the number sold in 1890?

A. No, sir.

Q. In any preceeding year?

A. No, sir.

Q. I will be glad if you will file as an exhibit in the case one of the tags with a hook.

A. Yes, sir. I would be glad to state in addition that we were in correspondence with the department, in a number of the Southern States using the tonnage system, and we bought our tags very much cheaper than any other department in the South. I do not recollect any so positively as I do in regard to Georgia. We bought our tags at less than one-half what Georgia paid. Ours cost $1.15 per thousand, and my recollection is Georgia paid $2.50 per thousand. We have to change the tags every year. I also file tags for 1891 and 1892. (Tags marked "Exhibits H, I, and K.") We have to change the complexion of the tags as well as the date every year, so as to avoid being cheated; otherwise they would use the old tags, if we did not change
104 them. The old tags have been known to be sold at greatly reduced prices. A fertilizer dealer in this State told me he was offered 10,000 old South Carolina tags in the city of Columbia at a very low price. They have the tag system in Virginia as well as in Georgia. They have been trying to adopt our system, but have not been able to do so. They use part tags and part tax at present. I am positive about this. In Georgia they use the tag system, and also in South Carolina.

Q. Do you know the fact that in Georgia the tonnage tax is 10c. per ton?

A. I do not. I know, in reading the law, the tax goes into the general fund, and the officers are paid from the general fund.

Q. What is your information about this being 10c. per ton?

A. I only know what I have heard. The officers of the department are paid from the general fund and not from the receipts of taxes on fertilizers. In South Carolina the whole goes into the college fund.

Q. Do you know the expenses of the inspection and analyses of fertilizers in Georgia as compared with North Carolina?

A. No, sir; they pay inspectors a larger sum in Georgia.

Q. Do you know how many analyses of fertilizers were made last year in this State?

A. I do not.

Q. Or this year?

A. I do not, positively.

Q. What bulletins are issued by the agricultural department?

A. Agricultural bulletins are issued each month. We issue them to publish the analyses of fertilizers. We show all of the brands registered as well as the analyses.

Q. Will you look at the papers I hand you, marked "L," "M," and "N," and state what they are?

105 A. Exhibit "L," dated August, 1891, is a bulletin of the agricultural department. That bulletin we have been issuing for many years. It contains the crop reports and a list of the manufacturing enterprises, &c. Exhibit "M," dated March, 1892—that contains the analysis of fertilizers and some other matter we fill up with to make it come out even, as, for instance, an article on thoroughbred sires and the State veterinarian needed and the situation of farmers, written by the commissioner, and an article on the castor-bean, an article on what it costs to grow cotton, and an article headed Farming that pays, and an article on country roads and on Diversity good economy.

Q. What is the number of pages of that bulletin?

A. Twelve.

Q. How many are taken up with the analyses of fertilizers?

A. Five; about that in the bulletin of August, 1891.

Q. I understand there is no fertilizer in this?

A. No, sir. The last paper I do not know anything about.

(Ex. "N" attached to affidavit of Col. J. W. Hinsdale on bill in this case.)

Q. These bulletins, I understand, were published at the expense of the North Carolina agricultural department?

A. Yes, sir.

Q. Please let me see the file of bulletins for the year 1893.

(Objection.)

(By the JUDGE: Admitted.)

Q. Have you any of this file?

—. Yes, sir—that is, we have only issued two. We have one in the press now like the last one. It has nothing except the analyses of fertilizers and enough other matter to fill up vacant space. You notice the last one is almost entirely devoted to the analyses of fertilizers. Bulletins of March and February, 1893, marked "O" and "P," respectively.

Q. The bulletin, February, 1893, contains 20 pages?

A. Yes, sir.

Q. I ask you if only six pages of this bulletin are confined to the report of the analysis of fertilizers.

A. No, sir; we regard the registration as much necessary

106 as the analysis. There are six pages devoted to the report of analyses and four to the registration of fertilizers.

Q. The report of registration contains the name and address of the manufacturer or general agent, the name of the brand, and the guarantee claimed as filed?

A. Yes, sir.

(Objection on the ground that the paper shows for itself.)
(By the JUDGE: Admitted.)

Q. The report of the fertilizer analyses shows the chemical contents of the brand analyzed?

A. Yes, sir; it is so intended.

Q. There are ten pages upon miscellaneous matter?

A. Yes, sir.

Q. The bulletin of March, 1893, contain- five pages on report of registration of fertilizers?

A. Yes, sir; there are ten pages; all devoted to fertilizers except two.

Q. How many pages are devoted to the report of registration of fertilizers?

A. Five pages.

Q. How many pages are devoted to the analysis of fertilizers?

A. Three pages, and two to miscellaneous matter.

Q. Will you please produce and file all the bulletins for the year 1892?

A. I now produce all the bulletins published in the year 1892, and they are marked Exhibits Nos. "Q," "R," "S," "T," "U," "V," "W."

Q. Will you please look at the bulletin for April, 1892, and state how many pages are devoted to analyses of fertilizers?

(Objection on the ground that all of these bulletins speak for themselves.)
(By the JUDGE: Admitted.)

A. This bulletin, April, 1892, has five pages devoted to the analysis of fertilizers and several pages of the balance is devoted to upland rice culture. It is published for the benefit of the farmers; also an article on broom-corn is published for their benefit.

Q. There are sixteen pages in the bulletin?

A. Yes, sir.

107 Q. Please look at bulletin of May, 1882, which is eight pages long, and state how many pages are devoted to the report of analyses of fertilizers.

A. May is about the conclusion of the fertilizer year and there is only one page on that subject.

Q. Look at bulletin of July, 1892, which is eight pages long, and state how many pages are devoted to the report of the analyses of fertilizers.

A. The fertilizer year had ended entirely and there is none. I will also state that a large amount of the bulletin is devoted to the condition of the crops of the State.

Q. Please look at bulletin of August, 1892, which is 18 pages long, and state how many pages in it are devoted to the report of analyses of fertilizers.

A. The August bulletin has for several years been issued by me mainly to show the condition of the resources of the State. That is what this bulletin is intended for. There are no pages on

fertilizers. It gives an account of the resources of the State, and we have been very much complimented on it.

Q. Please examine bulletin, September, 1892, and state how many pages are devoted to the report of analyses of fertilizers?

—. It is in the fall of the year. Part of one page is devoted to fall registrations.

Q. Is any part of this bulletin devoted to the report of analyses of fertilizers?

—. No, sir; it is devoted to fall registration.

Q. Look at bulletin, February, 1892, which is twelve pages long, and say if it is not true that only six pages are devoted to the analyses of fertilizers.

A. Six pages are devoted to the analyses of fertilizers and almost the entire balance to the registration of fertilizers.

Q. There are two pages of miscellaneous matters?

108 A. Yes; nearly two pages.

Q. I ask you if these two pages have anything to do with the report of registration or analysis of fertilizers.

A. No, sir.

Q. Please produce the bulletins issued by the department in the year 1891.

A. I produce all we now have on hand, and they are marked "2," # 3, # 4, 5, 6, 7.

Q. Please look at bulletin # 2, containing six pages, and state whether it shows any report of analysis of fertilizers or of registration.

Answer. Yes; it contains two pages of registration, and the whole of it is devoted to fertilizers.

Q. There are no reports of analyses?

A. There are not. No reports had been made at that time.

Q. About four and a half pages of it are devoted to the publication of the act of 1891 in regard to the tonnage tax, is it not?

A. Three and a half pages are devoted to a copy of the act of 1891.

Q. Please look at bulletin of April, 1891, which contains 8 pages, and state how many pages in it are devoted to the registration of brands, and how many to analyses of fertilizers, and how many to other matters.

A. Three pages are devoted to analyses, three pages to registration, and two pages to other matters.

Q. I ask you if one of the pages which you say is devoted to analyses, if the larger part of it is not devoted to the art of milking.

A. Part of it is, but the principal is devoted to analyses.

Q. Please look at bulletin of June, 1891, containing ten pages, and state how many pages are devoted to the report of analyses of fertilizers and how many to the report of registrations.

A. There are two pages devoted to analyses and three to other fertilizer matters, and the balance is crop report.

109 Q. I ask you if the three pages which you say are devoted to fertilizer matters are not a discussion by Dr. Battle and

yourself of the controversy between the department and the Durham Fertilizer Company.

A. No, sir; it is a statement of facts of the conduct of the Durham Company in some of their transactions. It was an important fertilizer matter.

Q. Please look at bulletin of July, 1891, containing four pages, and state whether it is not a return of the crop reports.

A. It seems to be devoted entirely to crop reports.

Q. Look at bulletin of August, 1891, containing 14 pages, and state whether it contains any report of the registration or analyses of fertilizers.

A. This is our August bulletin. It is published after the crops are through with and gives a statement of the condition of the crops and of the industrial condition of the State. It contains no report of the registration or analyses of fertilizers, but does contain a half column on subject of fertilizers, in the way of advice to farmers on purchase of fertilizers.

Q. Are not six and a half pages devoted to giving a list of cotton and woolen mills and factories in North Carolina and one page and a half devoted to the registration of cattle, horses, etc.?

A. Six and a half pages are devoted to factories and one and a half pages to the introduction of pure blooded stock.

Q. Please look at bulletin of October, 1891, containing 8 pages, and state whether it contains any report of fertilizer analyses or registration.

A. There is very little of it devoted to fertilizers; part of one page only. The balance is devoted to miscellaneous subjects in which farmers are interested.

Q. Is any part of it devoted to the report of analyses of fertilizers?

—. None to analyses of fertilizers, but it is devoted to an article on the laws governing the sale of fertilizers.

Q. Is any part of it devoted to the registration of fertilizers?

A. No, sir; part is devoted to the law governing the sale
110 of fertilizers and entitled Instructions to Merchants and Others Dealing in Fertilizers. Each page of this bulletin contains two colum-s.

Q. And this article is about one-half a column?

A. A little over one-half.

Q. Look at bulletin of November, 1891, containing twelve pages, and state whether any portion of it is devoted to the analysis of fertilizers or to the registration of fertilizers.

A. No, sir; there is nothing in this bulletin relative to either of these subjects.

Q. What does that bulletin contain?

A. A report of the exhibit at the Interstates exposition of 1891.

Q. Are not all of these reports written, published by and at the expense of the North Carolina department of agriculture, and paid for from the receipts of the tonnage tax?

A. It is paid for by the department of agriculture, and its only source of income is the tonnage tax.

Q. Are these the only publications which are or have been issued by the board of agriculture since January 21st, 1891?

A. Yes, sir. I would like to state that the board has tried very hard to conduct its business strictly in accordance with the ruling of the circuit court.

Q. How many members has the board of agriculture?

A. Ten.

Q. What is their pay?

A. The same *per diem*—that is, $4.00—as members of the legislature and mileage for the time actually employed.

Q. How many meetings do they have?

A. Two a year—in December and in June.

Q How long do these meetings generally hold?

—. That depends on the amount of business. The June
111 meeting generally occupies a whole week, and the December meeting not so long.

Q. Have you a tabulated statement of the expenses of the board of agriculture for the year 1892, showing how much the inspection of fertilizer- cost?

A. I gave a statement to you on yesterday. I have no tabulated statement.

Q. Where is Mr. Bruner now engaged?

A. In Chicago.

Q. Doing what?

A. At the exposition—at the World's Fair.

Q. Is he still secretary of the board of agriculture?

A. Yes, sir; he is so regarded.

Q. Does he still draw his salary as secretary of the *of the* board of agriculture?

A. I think so.

Q. How long has he been engaged in this World's Fair work?

A. He has been in Chicago part of the month.

Q. Has he been engaged in the work only a month?

A. He has been engaged for nearly a year.

Q. I ask you if the principal part of his services has not been in connection with the World's Fair exhibit?

A. Yes, sir; a large part of his services has been devoted to the World's Fair, and other officers in this office have done his work in the office while he has been engaged in the exposition work.

Q. Are any other officers or employees of the agricultural department engaged in a similar service?

A. No, sir.

Q. Are any of the officers or employees of the board of agriculture in whole or in part engaged in any other services than those appurtaining to the enforcement of the fertilizer tax law?

A. None that I know of.

Q. Has the department of agriculture during the past two years been in the habit of issuing circulars to the farmers of the State for the purpose of ascertaining crop reports?

A. I issue a little crop card to them during the crop season
112 similar to the *to the* one I now produce, marked Exhibit 8.

Q. That is paid for by the department of agriculture?

A. Yes, sir; it cost two cents to get it.

Q. Is that the only circular you issue?

A. We issue other circulars frequently in regard to the fertilizer laws. For instance, we had to issue the ruling of the attorney general in the matter. Here is one I issued to the fertilizer dealers.

Q. To whom was the Davidson circular issued?

A. To the farmers of the State.

Q. How much money is appropriated by the board of agriculture each year to the experiment station?

A. None. They appropriate a certain amount for the analysis of fertilizers.

Q. How much do they appropriate each year for the analysis of fertilizers?

A. That depends upon the amount of work done. The appropriation this year, I think, is $8,000.

Q. What was the appropriation last year?

A. I cannot say.

Q. How was it in the vouchers?

A. I don't recollect.

Q. Is not this appropriation made to the experiment station?

A. No, sir.

Q. To whom is this money paid?

A. To Dr. Battle, director of the experiment station, for the analyses of fertilizers. He is also regarded as State chemist.

Q. I ask you if it has not been paid to D. W. Bain, treasurer of the fertilizer control station?

A. It may be so; that is not the way I understood it. Some of the vouchers may have been paid that way.

Q. Please look at voucher in the account of the fiscal year ending November 30th, 1891, entered on March 4th, 1891, D. W. Bain, treasurer fertilizer control station, $1,000.00, and state what
113 that *that* means.

A. I do not know what that means. I suppose it was made as a part payment. Mr. Bain, as State treasurer, was treasurer also of the hatch fund or experiment-station fund, and, I suppose, was paid as a part of the amount due for analysis.

Q. What is the hatch fund?

A. The fund appropriated by Congress to the experiment station.

Q. Please look at entry in the same account of January 20th, 1891, D. W. Bain, treasurer, fertilizer control station, $7,000.00, and state what that means.

A. I suppose it was paid to Mr. Bain as treasurer of the experiment station for work done by chemists for analyses.

Q. Please look at entry of June 23rd, 1891, in the same account, on page 19 of the pamphlet, D. W. Bain, treasurer, balance, fiscal year 1891, to college, $2,065.51, and state what that means.

A. That, I suppose, was for money we borrowed from the college after the change from the specific tax to the tonnage system. We had no fund and the college had some they did not need and they

loaned us a small amount, which we refunded. I suppose that is what it means.

Q. When was this money borrowed?

A. About January 1st, 1891, or in December, 1890.

Q. Was this money returned out of the proceeds of the tonnage tax?

A. Yes, sir; we used it in the conduct of the inspection of fertilizers and, of course, it was refunded out of the receipts from the sale of tags.

Q. Please look at entry of October 19th, 1891, John Robinson, commissioner, expenses exposition, $300.00, and state what that means.

—. We appropriated that amount of money to make an exhibit at the exposition here in 1891, and it was used for that purpose. We had a great many things on hand and all that was
114 required was to take them out and put them in place and take care of them and bring them back. The board was careful to get the opinion of the attorney general that it was a legitimate expense before they appropriated the amount.

Q. Have you a copy of the opinion of the attorney general upon that subject?

A. We have a copy of the opinion of the attorney general upon that general subject of expositions. I do not know that we have a copy of the opinion of the attorney general upon this particular subject.

Q. Is this the only money appropriated by the board of agriculture in this way?

A. Yes, sir.

Q. Was this money appropriated from the receipts of the tonnage tax upon fertilizers?

A. I suppose so. This is the only source of revenue we have.

Q. I observe that the following items of postage appear in the accounts for 1891–'92:

1891.	
January 26	$20 00
February 21st	25 00
April 17th	62 20
May 26th	27 00
May 29th	11 00
June 5th	29 80
June 25th	20 00
August 3rd	63 00
September 3rd	50 00
September 29th	25 00
November 23rd	50 00
December 11th	50 00
January 18th, '92	50 00
115 1892.	
February 9th	50 00
March 2d	25 00

March 30th	50 00
April 30th	50 00
May 9th	82 50
May 25th	11 00
June 1st	60 00
August 17th	60 00
October 3rd	40 00
Making a total between January 26th, '91, & Oct. 3rd, '92, of	$911 50

Was this postage used principally for mailing bulletins to the farmers?

A. It was used for a great many purposes. Our correspondence with fertilizer dealers is particularly heavy. We use it for that, and we frequently have to send tags by mail, and also other bulletins. It is not used principally for bulletins. I cannot say how much of it is used for bulletins.

Q. Please look in the account of 1892, of February 29th, D. W. Bain, treasurer, analytical work, $3,000.00. What does that mean?

A. That means it was paid for analyses of fertilizers to him as treasurer for the experiment station.

Q. Look at item in same account, of April 25th, D. W. Bain, analytical work, $2,000.00. What does that mean?

A. I do not know what it is for, but I suppose for analyses of fertilizers. He is treasurer of the experiment station.

Q. Look at item of same account, of July 1st, D. W. Bain, treasurer, analytical work. Do you know what that means?

—. I suppose it was for analyses.

Q. Do you remember the fact that the Patapsco Guano
116 Company, shortly after the institution of this suit, filed with you as commissioner of the board of agriculture a sample of its fertilizer with a label upon the same?

A. I do not remember. They may have done so. I cannot remember any specific one, there are so many. I do not remember whether they did or not.

Cross-examination:

Q. Is any of this tonnage tax appropriated by the board of agriculture to the agricultural college?

A. No, sir; not a cent. The board is very punctilious in that matter and conforms strictly to the ruling of the circuit court as they understand it.

Q. Has any of this tax been appropriated to the experiment station, except for the analyses of fertilizers?

A. No, sir; the board of agriculture makes this arrangement with the director of the experiment station to do the analyses of fertilizers for it at a reasonable sum. Inasmuch as it would cost us to get it done by outside chemists as much or more, it is more satisfactory to have it done at home by our own chemists.

Q. All of the brands of fertilizers have to be analyzed, do they not?

A. All that we can find. Sometimes we do not find all, but all we can find are analyzed. Sometimes there are only such a small quantity of some brands coming into the State we do not find them at the time they are shipped, and they will not be analyzed, but all we can find are analyzed.

Q. How many brands were sold in North Carolina in 1891 and how many in 1892?

A. Three hundred and fifty in 1891 and three hundred and ninety-six in 1892. This year it will be over four hundred.

Q. Please state the methods adopted for the inspection of fertilizers, inclusive of the analyses.

A. During the inspection season we keep four inspectors in the field at different points in the State, and I am kept informed
117 of their movements. They draw these samples of fertilizers and put them in jars. We require them to draw samples from ten per cent. If they find one hundred sacks, they draw from ten different sacks; not less than that and frequently more. They put the samples in a jar, and this jar is sealed up and numbered. This jar is sent to us, and we send it to the chemist, and he only knows it by the number. These jars are sent in by express. They usually come in boxes containing from ten to fifteen jars. There would be too much risk in shipping them by freight. The inspectors frequently have to correspond with me by wire. If they find anything wrong, they must notify me at once by wire. The expenses of this correspondence are considerable.

Q. Can you get on with fewer expenses than you have?

A. No, sir; we cannot. We do not have enough this year. We have expended this year $2,800.00 on inspection, and we have had to stop because the appropriation was exhausted. We had to stop inspection on that account. It is impossible to give an inspection in this State, with the great number of brands on the market, with less than $3,500, and probably it would take more than that.

Q. By inspection you mean exclusive of analyses?

A. Yes, sir; I mean the gathering of the samples and seeing that the sacks are tagged, and that the brands correspond with the brands filed in this office. That is the duty of the inspector. It is also his duty to draw a sample and generally to see that the law is complied with.

—. Is not the chief object of the bulletins issued to convey information to the consumers and dealers of fertilizers of matters connected with the fertilizers?

A. Yes, sir: that is the object of the bulletin. The object is to get the consumers, who are the farmers, informed as to the ingredi-
ents and the value of these fertilizers and especially that the
118 farmers may be protected against fraud.

Q. In your answer to the bill you state that the appropriation of $9,000 to the World's fair was a loan. Please explain that.

A. It was so regarded by us here as a loan, and not only by the officers of this department, but by the board of agriculture. I did

not know until I saw it on yesterday that the voucher conveying the money was made in different aspect. It was conveyed absolutely acco-ding to the voucher, but we regarded it as a loan to the World's fair, and we so stated. That answer was gotten up not by myself alone, but with the assistance of Mr. Bruner, the secretary, and Dr. Battle, and that was our opinion. I know it was regarded as a loan by several members of the board.

(This answer is objected to.)
(By the JUDGE: Disallowed. Exc.)

Q. Does Mr. Harris, the curator of the museum, work in this office or do any work connected with the fertilizer business of the department when required?

—. Yes, sir; when required he does some work for this office in the inspection of fertilizers.

Q. Was the amount collected in 1891 from the tonnage tax unusually large?

A. We regarded it so. It was from the number of inspections.

Q. Would it be practicable to inspect and analyze 350 or 400 brands of fertilizers sold in this State with only one-fifth of the tonnage tax collected?

—. No, sir; we could not begin to do it with one-fifth.

Cross-examination:

Q. Do you know how many analyses of fertilizers were made last year?

—. No; I do not know positively.

Q. Do you know what it costs to make one analysis?

—. I do not think I do. I never estimated the costs.

—. Do you know what an analysis of fertilizer can be made for in the city of Baltimore?

—. I only know from information I have received from others. I never had any made.

119 Q. Do you know that the analyses which are required to be made under the fertilizer law of North Carolina could be made for less than $8,000?

—. I know only from the amount of work done and from the information I got as to the cost in other places, and I do not think it could. It usually costs about $25 for an analysis.

Q. How do you know it usually costs about $25.00?

A. From information I receive from people who have had analyses made. I would like to state in explanation of what I say that four hundred brands at $20 a brand is a very low price.

Q. Do you suppose for one moment you cannot make a contract to analyze four hundred brands for less than $8,000?

A. Not in the way we do it here. There are two analyses made for every one. If it is not satisfactory, then other analyses are made. Frequently four or five are made of one brand.

Q. Do you know what the amount of chemicals used in an analysis costs?

A. I do not.

Q. Suppose I should show you a letter from Dr. F. P. Venable, in which he states that the chemicals used in making an analysis costs only $1.50, would you be surprised?

A. I do not know anything about it.

Q. You say the analysis in North Carolina costs less than in any other State.

—. I did not say so. I said we got it done at less expense and in a more satisfactory way than if we sent the samples off to have the analyses made.

—. Then you did not have reference to its being done by other parties in Raleigh?

—. There is no one in Raleigh who could do it.

Q. Your answer had reference to sending it off to another State?

A. Yes, sir.

Q. Do you know the fact that in the State of Georgia for the year 1892 the salaries of chemists amounted to only $2,206
120 and for replenishing apparatus and for chemicals only $1,265.76, and that there were 1,233 analyses made?

A. I do not know anything about it.

Q. Do you know that in the year 1890, in the State of Georgia, there was an appropriation of $10,000 to the agricultural department; that the new fertilizer law of that State produces $8,100, and that out of this the costs of carrying out the law was paid, amounting to $3,034.12, leaving the amount of $5,064.88, which was returned to the treasury?

—. I do not know that. I only know that there is only one inspector in Virginia, and that one cannot do as much as should be done. The commissioner of agriculture of Virginia regards our system the best in existence.

(Objection, as not called for, and that it is a matter of opinion.)

(By the JUDGE: Disallowed. Exc.)

Q. Do I understand that your testimony in regard to the cost of analyses is not from your actual knowledge, but from what you have heard from others?

—. It comes from my general information in regard to the matter, which is largely received from other persons.

—. Have you had any actual experience in regard to the matter?

A. I have not.

Q. Is not your testimony upon this point based entirely upon he-resay?

A. I do not know that it is based upon hearsay, but upon information I have from others.

Q. I understand you have no personal knowledge of the matter yourself?

—. I never had any analyses made.

(All of the testimony upon the cross-examination as to the cost of analyses of fertilizers is objected to as not based upon personal knowledge.)

(By the JUDGE: The exception is disallowed as not specific. It should point out the answer objected to.)

121 Redirect examination:

Q. Can you turn to the resolution of the board of agriculture by which the $9,000 was appropriated to the World's fair?

A. I can.

Q. Will you please now read from the minutes of the board, which you now hold in your hands, the resolution I refer to?

A. "Resolved, That the board of agriculture appropriate, out of the fund belonging to said board and now remaining on hand after defraying the current expenses, an amount not to exceed the sum of $9,000 to be used and employed under the direction of said board in making an exhibit of the resources of North Carolina at the World's fair to be held in the city of Chicago in the year 1893."

This was passed at the Dec. meeting of the board in 1891.

Q. I will ask you to read section 2199 of the Code and state whether this appropriation was not made by authority of that law.

A. It was made upon the opinion of the attorney general. The board asked him to file an opinion, which he did. They considered the matter themselves. I do not know whether the attorney general based his opinion upon that section or not.

Q. Was the opinion of the attorney general in writing?

A. Yes.

Q. Can you produce it?

—. I think I can. It is as follows:

State of North Carolina, department of justice, office of the attorney general.

RALEIGH, *December* 3, 1891.

Hon. W. F. Green, chairman State board of agriculture, Raleigh, N. C.

SIR: I have received a copy of the resolution adopted by the State board of agriculture of this State in which my opinion is desired upon this question: "Whether this board has authority to use the surplus of the revenue from fertilizers in 1891 for
122 the purpose of making an exposition of the products of North Carolina at the World's Columbian exposition in 1893."

The Code, section 2199, provides: "The department shall as soon as practicable prepare a convenient hand book, with the necessary illustrative maps, which shall contain all necessary information as to the mines, minerals, forests, soils, climates, waters and water powers, fisheries, mountains, swamps, industries, and all such statistics as are best adapted to give proper information of the attractions and advantages which this State affords to immigrants, and shall make illustrative exposition thereof whenever practicable at international exhibitions, and shall have authority to offer premiums for the encouragement of agricultural and mechanical pursuits and the raising of improved live stock in this State."

It will be at once noticed that the words employed in this statute

are apparently more than merely directory, and when the fact is considered that the department of agriculture was established not only for the benefit of that portion of our population already in agricultural and kindred occupations, but to make known to the people of other States and countries the vast resources and desirable conditions existing within this State, and thereby induce worthy men and women to make their homes and invest their capital in our borders, a very cogent reason is furnished for the use of such strong and peremptory words as were adopted by the General Assembly in this connection. The department "shall make illustrative expositions thereof (mines, minerals, industries, etc.) whenever practicable at international exhibitions."

The proposed Columbian exposition to be made in the city of Chicago in 1893 is such an "exhibition" as is contemplated by the section to which I have referred. Whether it is "practicable"
for the department to make an exhibit on that occasion is a
123 question to be determined by the State board of agriculture.
If it shall find that it is practicable to do so, it will be its duty to take such methods as will be requisit- for that object.

The necessary expenses should be paid by the treasurer upon proper voucher and charged by him to such account as the law and rules of the treasury department not inconsistent therewith require.

The State board of agriculture, I conceive, has no authority to designate what specific fund or monies in the treasury shall be appropriated to this purpose. My opinion upon this point was communicated to the board in my letter of 22 Oct. last.

In my opinion, the duty imposed on the department to make the proposed exhibit, the board having first decided that it is practicable, there is by necessary implication an appropriation of the public moneys to defray the proper expenses.

Respectfully,

(Signed) THEO. F. DAVIDSON,
Attorney General.

The letter of October 22nd, referred to in this letter, reads as follows:

State of North Carolina, department of justice, office of the attorney general.

RALEIGH, *Oct. 22nd*, 1891.

Hon. W. F. Green, chairman State board of agriculture, Raleigh, N. C.

DEAR SIR: At the last meeting of your board a resolution was adopted asking my opinion upon the following inquiry:
124 "Does the act of January 21st, 1891, entitled An act to amend chapter one, volume II, of the Code permit the appropriation of any part of the funds raised thereby to any purpose other than that named in the first section of said act, viz., 'to de-

fray the expenses connected with the inspection of fertilizers and fertilizing materials of this State'?"

It is my opinion that the act mentioned simply substituted another scheme of taxation upon fertilizers for that which had formerly existed, but which had been declared unlawful by the Federal courts. It does not affect the powers of the board of agriculture in respect to their duties or functions imposed on it by this organic law and the statutes amendatory thereto. The act of 1891 unquestionably intended by the tax therein imposed to provide a fund from which the expenses incurred in the enforcement of the law for the inspection of fertilizers should be defrayed and appropriates it or so much as will be necessary to that object. The board of agriculture does not make the appropriation; the law makes it.

Section 2208 of the Code provides: "All monies arising from the tax on licenses, from fines and forfeitures, fees for registration and sale of lands, not herein otherwise provided for shall be paid into the State treasury and shall be kept on a separate account by the treasurer as a fund for the exclusive use and benefit of the department of agriculture."

There is no "tax on licenses," and while there is no similar provision in the act of 1891 in relation to the "charge" of twenty-five cents per ton therein imposed I nevertheless think that, considering the two enactments together, it may be reasonably *be* inferred the same disposition may be made of it; but, while the fund thus set apart cannot be used for any purpose other than the "benefit of the board of agriculture," it by no means follows that the
125 board of agriculture has an unlimited power of disposition over it. The board can only apply it to the purposes specifically directed by law. The board has no power to appropriate—using that term in the sense in which it is usually employed in legislation—this fund; it can only direct its applications to such objects and by such methods as the law may designate. The legislature alone has power over its appropriation.

Very truly yours,

(Signed) THEO. F. DAVIDSON,
Attorney General.

Q. I ask you, sir, if the section under which the $300 was appropriated to the Interstates exposition was not section 2214 of the Code.

A. I do not know. We relied upon the opinion of the attorney general.

Q. I ask you if you got a written opinion from the attorney general in regard to the appropriation of $300 or was it a verbal opinion.

A. It was simply verbal.

Q. Was there a resolution of the board authorizing the payment of the $300?

A. No, sir; it was simply appropriated.

Q. Was there a minute made of it?

—. I cannot say; I do not know.

Q. Look over the minutes of the meetings contained in the book which you hold in your hand and see if you can find any minute of it.

A. At the meeting of Oct. 19th, 1891, I find the following: "Whereas the board of agriculture, at its June meeting, in 1891, directed its officers to take charge of its exhibit at the Southern Interstates exposition, and whereas it appears that the sum of three hundred dollars or thereabouts is necessary in order to carry into effect the order of the said board, on motion, it is ordered that the sum of three hundred dollars be appropriated out of the funds of
126 the board in order to enable said officers to make said exhibit."

Q. When was the last time that Mr. Harris was called upon by the board of agriculture or its officers to do work in the department of agriculture?

A. I cannot tell when the last time was. We very frequently call upon him to do things for us.

Q. Has he been called upon to do anything during this year?

A. I do not recollect; I cannot say.

Q. Do you remember how many times he was called upon in 1892?

A. I do not.

Q. What was the character of the work performed by him on such occasions?

A. Various kinds of work. For instance, he made the cut for our tags.

Q. Do you remember any other work?

A. He is frequently called upon to do work by the board of agriculture. I do not know what the board calls upon him to do. He was appointed inspector by the board, but was afterwards relieved on account of his wife's health.

Q. Do you remember any other specific work besides inspection and the making of the wood cut that he has been called upon to do by the board?

A. I cannot say. I have not thought about it.

Q. Are you always present at the board meetings?

—. Yes, sir.

Q. When was he last called upon to do inspection duty?

—. I said I did not know.

Q. Has he been called upon in 1893 to do inspection duty?

—. No.

Q. Do you remember whether he was called upon to do such duty in the year 1892?

A. I cannot say that he was.

Q. His chief employment is to take care of the museum?

—. Yes.

JNO. ROBINSON.

Sworn & subscribed to before me this 26 day of May, 1893.

W. T. SMITH, *Com'r.*

127 Dr. H. B. BATTLE, being duly sworn, says:

Q. What is your occupation?

A. I am director of the experiment station.

Q. How many chemists have you engaged in the experiment station?

A. I ordinarily have four. At present I have only three, owing to a vacancy.

Q. Give me the names of the chemists you have employed.

A. B. W. Kilgore, B. F. Carpenter, J. S. Meng (who is now not with us), and R. E. Noble.

Q. Do I understand that these are with you permanently?

A. Yes, sir. We employ four permanently, but at present we have only three, owing to the vacancy in the place of Mr. Meng.

Q. What are their salaries and your own?

A. My salary is $2,500; Mr. Kilgore gets $1,200, Carpenter $1,100, Meng $1,000, and Noble $900, making a total amount of salaries paid ($6,700).

Q. What months of the year are you and your assistants most engaged in the analysis of fertilizers?

A. January, February, March, April, May, November, and December.

Q. And of these months which you have named in which are you least engaged?

A. May, November, and December. I will say that during large portions of the time we accept samples of fertilizers from farmers, and we are always ready to do that.

Q. Do you have much of that kind of work to do during these months?

A. No, sir; not during these months.

Q. I suppose the principal time you are occupied with the analysis of fertilizers is during the early part of the year, before the crops are planted?

A. That has been the time. That includes January, February, March, April, and a part of May.

Q. During these months—January, February, March, April, and a part of May—do you and your assistants have time to do

128 any other analysis except that of fertilizers?

A. Occasionally; yes, sir.

Q. What kind of work?

A. Work connected with the experiment station.

Q. What is that?

A. It depends upon the work carried on in other divisions of the station—for instance, there may be some digestion work going on—that is, the investigation of the digestive constituents of fodders, cattle food, &c.

Q. Have any of these gentlemen during these months just mentioned any duties to perform in connection with the A. & M. college?

A. No, sir.

Q. Do they at any other time in the year have any duties to perform in connection with the college?

A. No, sir.

Q. What other kind of work is carried on in the experiment station?

A. Some time analyses as to the quality of milk, the proportional part of cream constituents of milk and butter, and there may be some investigations going on about insecticides, fungicides, &c.: and then, of course, we have other investigations going on, such as tobacco which require a considerable amount of chemical work. I am speaking of the whole work of the station; especially during the spring months we can do but little experimental work.

Q. Do you have any analyses of waters, mineral waters, minerals, &c.?

—. We do some work in connection with mineral waters, but very little in connection with minerals. We formerly did that work, but have been dropping it off as much as possible. Most of the mineral work is mainly identification and does not require much time.

Q. What proportion of the time are you and your assistants engaged as compared with all other work in the analysis of fertilizers?

A. I cannot say.

Q. As much as one-third?

A. Fully, I think.

Q. Would that be a fair estimate or not?

—. I would not like to say that without investigating further.

129 Q. Of course I am only asking for your best impression about it.

A. I should say at least one-third, and probably more; hardly as much as one-half.

Q. How many analyses do you and your assistants make in the course of a year upon an average?

A. About three hundred and fifty for the year 1892; that does not include, however, a good many duplicates made upon the same sample.

Q. Does it take as much time to make a duplicate analysis as it does to make an original?

A. It requires about the same work.

Q. Counting each duplicate analysis as an original, how many analyses do you make according to your best impression, in the course of a year, of fertilizers?

—. Without going into details I should say about one-half of the total number more—that is, 175 added to the 350, making 525. There is another set of analyses which should also be considered, and that is in reference to the methods of analyses.

Q. Explain what you mean by that.

A. We have different methods of analytical work, and the Association of Official Chemists change the methods, and of course we

have to keep up with that change and compare it with the past work and do a great deal of co-operative work.

Q. That is, if I understand you, done in order that you may know that you are using the most approved methods in ascertaining the chemical ingredients of fertilizers?

—. Yes, sir.

Q. How often does this board meet?

A. Once a year.

Q. Do they always make changes at every meeting?

A. That depends upon circumstances.

Q. When did they meet last?

—. Last August.

Q. Did they make any changes then?

—. Yes, sir.

Q. How much additional work did the changes they made then entail upon you and your assistants, and what work that you
130 would not have been obliged to do in analyzing fertilizers?

A. The samples we work on in that connection are sent out by committees of the association and generally amount to 12 or 15. It requires very exact work and a number of determinations must be made on each one.

Q. What proportion in value of the chemicals furnished your station are used in the analysis of fertilizers for the department?

A. I cannot say.

Q. *X.* As much as one-half?

A. I cannot say. The work is of such a character that it is impossible to state. The value of the work in fertilizer analyses is in getting them ready for the farmers to use in their purchases, and we have to have a larger equipment than would otherwise be necessary. For instance, we are equipped to analyze 12 determinations, and that equipment is very expensive.

Q. Do you know what the chemicals for your department costs each year?

A. I cannot say without referring to my book.

Q. Please refer to your book and tell me.

A. The accounts embrace other things than chemicals. We spend $600 per annum on chemicals and apparatus, but that does not include all the apparatus we use.

Q. Can you estimate the proportion of these chemicals which are used in the analyses of fertilizers?

—. Three-fourths and probably more.

Q. Don't you use in your analyses a great deal of gas?

A. Yes, sir.

—. Can you give me an estimate of your gass bill a year?

—. About $325 to $350.

Q. What are your water rates?

A. We use our own water supply.

Q. What other element of expense in the analyses of fertilizers is there except the salary of the chemist, the cost of the chemicals and apparatus, and the cost of gas?

A. Clerical services and incidental expenses such as postage, &c.

131 Q. What is the cost of the clerical services for these months in analyzing fertilizers?

A. I will give you the cost of the clerical services for the whole year: One man at $600, a special clerk merely for the heavy season at $20.00 per month, and a stenographer at $35.00 *dollars* per month.

Q. Is the clerical service engaged in the analysis of fertilizers as much as one-half of the time?

—. About in the same proportion as the other force.

Q. Is that as much as one-half?

A. The clerical work goes along with the analytical work for the same time.

Q. Of course you keep a record of your analyses. Can you give me the number of analyses you made during each month of the year?

A. Not without my books.

Q. Please look over your books and give me the information.

A. I take 1892, from January to December, inclusive, and, excluding some samples I had in the previous estimate of cotton-seed products, which may not come directly under commercial fertilizers, the total is 316, as follows:

January	35
February	92
March	74
April	57
May	8
November	41
December	9

and this is to be increased by the committee samples I spoke of just now. This does not include the duplicates either. Duplicates were made in a large number of those samples—in fully one-half and probably more.

Q. What is the necessity of making duplicate analyses?

A. To be absolutely certain they are right.

Q. Do you know what the usual price is for making an analysis of commercial fertilizers in cities?

—. It varies.

132 Q. I ask you for making such an analysis as we are in the habit of making for available phos. acid, ammonia, and potash.

A. The usual price is about twenty dollars for a single analysis.

Q. Some of the first-class chemists charge only fifteen, do they not?

A. I cannot tell about that.

Q. What do you estimate the actual cost of a single analysis is? I mean, in the first place, counting the amount of gas, the amount of chemicals, and the skilled labor employed; and, of course, in

making the estimate, I mean by chemists who receive the same compensation as you and your assistants.

A. If you include the time of the expert in making it, I should say that $20.00 would be the average cost. The gas and materials are far less than that.

Q. I suppose one man could make 12 determinations at one time, each determination being of a single ingredient?

—. Yes, sir.

Q. How many determinations are usually in an analysis upon fertilizers where you are seeking to ascertain the amount of available phos. acid and potash?

A. Seven.

Q. What several ingredients are determined by each of these processes?

A. (1) Moisture, (2) soluble phos. acid, (3) insoluble phos. acid, (4) total phos. acid, (5) potash, (6) nitrogen, and (7) ammonia. There are really only six, as the ammonia is calculated from the nitrogen.

Q. How long does it take to make these six analyses of a single brand of fertilizer, supposing you go from one operation to the other?

A. One man might make the six analyses in a day.

Q. What would the chemicals of one of these cost?

A. I have never investigated the matter.

Q. More than $1.50?

A. I do not know.

Q. Please look at this letter from F. P. Venable and state how your estimate compares with his.

(Objection.)

A. I have no estimate similar to this at all. I suppose he has investigated the subject.

133 Q. His estimate of the costs of the chemicals in one of these analyses of fertilizers is $1.50 for the chemicals, 25 cents for the wear and tear on the apparatus; the cost of 250 feet of gas, water rates, rent, interest on capital in fixed apparatus, and the time of the workman are all considered at charges made in the city laboratories. How does your estimate compare with his in the amount of the chemicals needed?

(The defendant objects to this question because there is no proof that Prof. Venable made any such statement.)

Q. Do you know Prof. Venable's handwriting?

(Defendant objects to this question because the letter handed witness, if genuine, is an unsworn statement.)

A. I do.

Q. Is that letter in his handwriting?

(Objection.)

A. I believe it to be, but do not know it to be.

(By the JUDGE: There is nothing in the controversy as to Venable letter. It was not proved, and no answer was given by witness based upon it.)

—. Now I repeat my first question.

(Objection as stated above.)

A. I have never made any similar estimates.

Q. What amount of gas would you suppose is used in one of these analyses?

A. I cannot say.

Q. Would you suppose more than 250 feet?

A. I have no means of ascertaining.

Q. I now offer in evidence the report of the department of agriculture of Georgia, embracing the years 1891 and 1892, certified.

(Objection.)

(By the JUDGE: Admitted.)

Report filed, marked Exhibit 10.

Q. If it be true, as stated in the report which I have just offered in evidence, that the chemist in the State of Georgia made during the season of 1891–1892 101 analyses of acid phos., 19 of acid phos. with ammonia, 52 of acid phos. and potash, and 621 of acid phos., ammonia, and potash, complete fertilizers; 28 potash salts, and 50 of cotton-seed meals at a cost of $3,246.15, how is it the same
134 cannot be done in North Carolina?

A. (Objected to on the ground that there is no evidence of the facts asserted in the question.)

By the JUDGE: Allowed.

A. I have no means of knowing that was the total cost. It is possible they analyze during the whole year and do not try to get the analyses ready for the farmers to use in purchasing.

Cross-examination:

Q. Can analyses of the fertilizers used in the State be made in proper time—that is, in time to furnish information to consumers—with a less force than yourself and your assistants?

A. They cannot. In fact we have been increasing the force for that purpose—in order to get it done rapidly—that it might be of greater service to the consumers.

Q. Can such analyses as you make be made with a less expensive laboratory and outfit than that in use?

A. No, sir; all the equipment has been found necessary by actual experience and is put in for the special purpose of rapidity and accuracy.

Q. Would it be practical to employ competent chemists to do the work of the agricultural department, in connection with the fertilizers, by engaging them only during the busy season and discharging them for the rest of the year?

A. That would be impracticable. Competent men could not be engaged under those conditions.

Q. Do you and your assistants do any work in getting out bulletins?

A. Yes; we prepare all the copy and revise the proof of the department bulletin, and, in addition, issue a fertilizer bulletin similar to the regular experiment-station bulletin. We issue seven editions of these during the year.

Q. Does the agricultural department pay for the printing
135 of the bulletin you issue?

A. No, sir; the experiment station pays for the printing and all expenses connected with it.

Redirect examination:

Q. Have you any of the bulletins on hand?

A. Yes, sir.

Q. Please let me see the file for this and last year.

—. ——.

Q. As I understand it, the experiment station issues at stated times each year bulletins containing the names of the different brands of fertilizers, the address of the manufacturers or agents, and the chemical ingredients, the same—similar to that issued by the agricultural department?

A. It merely gives the names of the brands, the manufacturer, and the chemical analysis, with guaranty of brand.

Q. How often are these issued by the experiment station?

A. The first is issued early in January; then the biweekly editions come out as fertilizers are analyzed.

Q. How many copies of this do you usually get out?

A. About 14,000 of the January issue; the biweekly not so large an edition, from 1,000 to 1,700.

Q. To whom are they sent?

A. The January bulletin is sent to all names on the experiment-station list, generally to the farmers of the State, and the others generally to special applicants, principally among farmers.

Q. This bulletin would give to the farmers the same information and a little more than that obtained from the department bulletin, would it not?

A. No, sir; not as much. It does not include list of all the registered brands. It supplements the agricultural bulletin in disseminating these analyses.

Q. Do I understand from this answer that these bulletins contain analyses of fertilizers not to be found at all in the bulletin issued by the department?

136 —. No, sir; they are the same analyses.

Q. Are they not made in precisely the same form, and do they not give precisely the same information as the agricultural bulletin gives?

A. Some of them do. So far as the analyses are concerned, they are practically the same, but this bulletin does not undertake to give a list of the registered brands in the State, as the department bulletin gives. In addition, the analyses in the experiment-station

bulletin are not so complete as those presented in the department bulletin.

Q. In what particulars?

A. The biweekly editions merely give the available phos. acid, ammonia, and potash, but in the department bulletin as now printed the analyses include all determinations.

Q. I neglected to ask you this question: How does the number of analyses of fertilizers made by the experiment station in 1891 compare with 1892?

A. I cannot say positively, but a few less.

Q. How does 1890 compare with 1891?

A. That was before the tonnage charge came in; very much less. We did not receive as much fees as we do now for that work.

Q. To whom does the laboratory belong?

A. It is connected with the agricultural college.

Q. I wish now to put in evidence the act of North Carolina of 1891, chapter 9 and chapter 348.

Q. I observe that in your testimony and in the testimony of the other witnesses that the following terms are used: "Experiment station," "experiment and fertilizer control station," Hatch-fund experiment station, and "the experiment station." Do they all refer to and mean the same?

A. Yes, sir; the correct name is the agricultural experiment and fertilizer control station.

Q. State what it is.

A. It was created by the law of 1877 and connected with
137 the department of agriculture, but it has since been transferred to the agricultural college, and now it is no part of the agricultural department.

Q. This is your construction of the law bearing upon the subject?

A. Yes, sir; as a matter of fact the officers of the board of agriculture have nothing to do with the management of the experiment station.

H. B. BATTLE.

Sworn & subscribed before me this 27th day of May, 1893.
W. T. SMITH, *Com'r.*

138 T. C. HARRIS, being duly sworn, says:

—. What is your occupation?

A. I am curator of the muzeum.

Q. What are your duties as such?

—. My duties are mainly in the muzeum. I am employed by the board and generally do what else I am requested.

Q. What was the last service you performed for the board?

A. You mean outside of the muzeum?

Q. Yes.

A. I think it was map work or diagram work.

Q. When was that done?

A. I finished the last of it a week or two ago.

Q. What map was it?

A. It was connected with the fishery industry.

Q. When did you commence that work?

A. I did it at odd times when not otherwise employed; I suppose several weeks.

Q. What other services have you performed outside of curator?

A. I do anything I am requested. I have done much diagram work in regard to farm buildings, surface draining, plats of ground showing the growth of crops under certain fertilizers, plans for silos, &c. As you will find, they are in the bulletins and reports; also cuts of the phosphate rocks of Sampson and Duplin counties. These services are a part of my work.

Q. Can you recall any other character of work you have done for them?

A. I have done so many kinds I do not know exactly. I made the block for the fertilizer tags.

Q. How many of them have you made?

A. I think I made the first series they used in 1891, when they first began the tag system. I also do any kind of office work I am called upon to do.

Q. Have you prepared the cuts for any subsequent years?

—. No.

139 Q. What kind of office work do you do?

A. Any kind I am called upon to do—draining, map-ing, &c.

Q. Your principal duties, however, are in connection with the muzeum?

A. Yes, sir.

THOS. C. HARRIS.

Sworn and subscribed before me this May 27, '93.

W. T. SMITH, *Com'r.*

140 S. W. BREWER, being duly sworn, says:

Q. What is your business?

—. I am a commission merchant and furnish farmers' supplies.

Q. Do you deal in fertilizers?

—. Yes, sir; to a limited extent.

Q. How long have you been dealing in fertilizers?

—. About fifteen years or more.

Q. How did the volume of fertilizer business of last year compare with previous years?

A. I do not think it was as large as usual.

Q. How does the volume of business this year compare with that of last year?

A. I have made no effort to find out, so I cannot answer with accuracy. I have no information except what I gather from our own business, and from our business it is about the same. The difference has been very little. I have not taken the trouble to examine, but I should say the difference would be very little.

Q. How did the business of 1891 compare with that of previous years?

A. The business of 1891, as I remember it now, was fully up to the average, if not over the average, of previous years. Last year was the year we had a small business. The year 1891 was fully an average if not a little more than an average year.

Q. Were you dealing very extensively in fertilizers in 1891 and previous than you are now?

A. I do not know that we were. We make no special effort to sell guano. We sell mainly to those whom we sell other supplies to.

Q. From what source do you derive your knowledge and information in reference to the business of past years?

A. I only derive it from my individual business. As I have said, I have made no effort to find out anything about it and I can only speak from my own business.

S. W. BREWER.

Sworn and subscribed before me this 27th May, 1893.

W. T. SMITH, *Com'r.*

141 E. B. BARBEE, being duly sworn, says:

Q. Where do you live?

A. In Raleigh.

Q. What is your business?

—. I am in the cotton business, principally. I have been and I am still, to a limited extent, in the grocery business.

Q. Are you engaged also in the fertilizer business?

A. Yes; I handle fertilizers.

Q. How long have you been in the fertilizer business?

A. I suppose about 17 years.

Q. As far as your knowledge and experience serves you, what was the volume of the fertilizer business in 1892 as compared with other years?

A. It was very much smaller; I should say about 40%.

Q. How did the fertilizer business of this year compare with that of last?

A. There is an increase of 40% or 50% this year.

Q. How does the business of this year compare with that of 1891?

A. It is about the same.

Q. Do you consider the business of this year and of 1891 as about the average?

A. I think so. The fertilizer sales have been increasing all the time. The volume of business for the years 1891 and 1893 is about the same as for previous years.

Cross-examination:

Q. Are you speaking of the business in Wake county or of the whole State?

A. I was giving my information of the business. I get my ideas of it to a certain extent from dealers, travelling men, etc.

Q. Is not your knowledge confined to the volume of business in Wake county and the neighboring counties, with the inhabitants of whom you do business?

—. Of course that comes more under *by* supervision, but I hear a great deal from agents.

Q. Then your knowledge is principally based upon hearsay; not upon your personal knowledge or observation, but from what you hear from agents?

142 A. It is based upon my own knowledge in this section. In other sections of the State it is principally based upon what I hear from agents and people with whom I talk.

Redirect examination:

Q. When you speak of agents do you mean travelling agents of fertilizers?

—. Yes; agents who represent different fertilizer brands.

E. B. BARBEE.

Sworn and subscribed before me this May 27th, 1893.

W. T. SMITH, *Com'r.*

143 And I certify that the depositions were taken, sworn to, and subscribed as herein set forth, and the exhibits offered are herewith filed and marked as herein set forth.

W. T. SMITH,
Commissioner.

June 1st, 1893.

144 UNITED STATES OF AMERICA, }
Eastern District of North Carolina. }

Depositions for Plaintiff.

Circuit Court, Fourth Circuit, at Raleigh.

The President of the United States of America to Weldon T. Smith, Greeting:

We, reposing especial trust and confidence in your integrity, do authorize and empower you to cause William H. Grafflin to appear before you at such time and place as you may appoint, and him on oath to examine touching all such matters and things as he shall know of and concerning a certain matter of controversy pending in our circuit court of the United States for the eastern district of North Carolina, wherein The Patapsco Guano Company *et als.* are plaintiffs and The Board of Agriculture of North Carolina and others are defendants, and his deposition, by you in writing so taken, the same to transmit, sealed with your seal, to the judges of our said circuit court of the United States, to be held for the eastern district of North Carolina, at Raleigh, on the first Monday in June next, to be read in evidence in behalf of the complainants in said controversy.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the 26th day of May, 1893, and in the 117th year of the Independence of the United States.

[SEAL.] N. J. RIDDICK, *Clerk.*

145 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, for Itself and all Other Non-Resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties to and Contribute to the Expenses of this Suit,

against

THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. S. Primrose, W. F. Green, S. B. Alexander, H. E. Fries, N. B. Broughton, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, Elias Carr, and John Robinson, Commissioner.

To the defendants:

You are hereby notified that on Monday, the 29th day of May, 1893, at 10 o'clock a. m., at the office of the agricultural department, in Raleigh, N. C., before W. T. Smith, commissioner, the plaintiff will proceed to take the deposition of William H. Graflin, a witness for plaintiffs, to be read in evidence at the hearing of this suit, and you are hereby notified that you may, if you see fit, attend before the said W. T. Smith, commissioner, at the time and place aforesaid, and cross-examine said witness if you desire to do so.

Very respectfully, JOHN W. HINSDALE,
Attorney for Plaintiffs.

Raleigh, N. C., May 26th, 1893.

Service accepted May 26th, 1893.

BATTLE & MORDECAI,
Sol. for Def'ts.

146 UNITED STATES OF AMERICA,
Eastern District of North Carolina.

In the Circuit Court. In Equity.

PATAPSCO GUANO CO.
vs.
BOARD OF AGRICULTURE OF NORTH CAROLINA.

Pursuant to the annexed commission to me directed I, W. T. Smith, commissioner, under the authority hereof, on the 29th day of May, 1893, in the office of John Robinson, commissioner of agriculture of North Carolina, in the city of Raleigh, in the county of

Wake and State of North Carolina, both parties being present by their counsel, to wit, the Patapsco Guano Company, by John W. Hinsdale, att'y, and the Board of Agriculture of North Carolina, by S. F. Mordecai, att'y, proceeded to take the deposition of William H. Grafflin, who, being first duly sworn to speak the truth, the whole truth, and nothing but the truth between the parties named in the said commission, deposes and says as follows:

147 MAY 29TH, 1893.

W. H. GRAFFLIN, being duly sworn, says:

Q. Where do you live?

—. In Baltimore.

Q. What is your occupation?

A. I am treasurer of the Patapsco Guano Company.

Q. How long have you been connected with the Patapsco Guano Company?

A. Since 1869.

Q. How long has the Patapsco Guano Company been doing a business in fertilizers in the State of North Carolina?

A. Since 1866.

Q. What for the last four or five years has been the average sales of the Patapsco Guano Company—of its fertilizers in North Carolina?

A. The average was disturbed very much last year. Omitting that, the average will probably be in the neighborhood of 3,000 tons per annum. Last year the sales fell to 1,128 tons. This year, however, we exceed 2,000 tons.

Q. What would be the profits to your company upon its average business during a year in North Carolina?

A. The contention here is on the business of 1892. The profits for that year were $3.50 per ton.

Q. Is $3.50 about the average profit?

A. No; for previous years it was larger.

Q. What effort has it required on the part of your company to build up the business?

A. It has required considerable travelling, soliciting, advertising, and correspondence.

Q. If, by a refusal on the part of the guano company to pay the tonnage tax which was exacted by the laws of 1891, the business of the company should be broken up in North Carolina and the company compelled to retire from the State, what would be the loss or damage to the company?

A. The loss or damage would be the entire profits on that
148 amount of business, which would largely exceed $2,000.

Q. What amount of capital has the company invested in the plant, machinery, etc., used in the manufacture of fertilizers?

A. We have an excess of $250,000 at present invested.

Q. What would be the effect of the enforcement of this law upon your business in North Carolina if you refuse to pay the fertilizer tax and were not protected by the courts?

(Objected to as being a question of law.)

A. In my opinion, it would stop the sale of the goods entirely, as we could not get any one to buy them.

Q. Shortly before the institution of this suit what did your company do with reference to forwarding to the commissioner of agriculture, in Raleigh, a sample of the fertilizer?

A. All the requirements of the law were complied with. The sample was sent and a statement of the guaranteed analysis, which, I believe, is everything required except the application of the tag and the payment of the tonnage tax.

Q. Was this done before making any shipment of fertilizer into the State?

A. Yes, sir.

Q. Was the sample sent a true and faithful sample?

A. Yes, sir; it was taken from the bulk of the goods.

Q. Was the sample accompanied by a label, stating the name, location, and address of the manufacturer and of the chemical constituents of the fertilizer?

(Objection on the ground that the statement is the best evidence of what was sent.)

A. Yes, sir.

Q. We now call upon Col. Robinson to produce the sample that was sent.

(Objection upon the ground that Col. Robinson is not upon the witness stand.)

Q. I will now ask you, Mr. Grafflin, if you have not this
149 moment heard Col. Robinson say he has not the sample with the label sent in 1892.

A. I so understood him.

Q. What has every bag which has been shipped by you into the State had stamped or labelled upon it in the way of analysis?

A. Guarantees of ammonia, 2½ %; available phosphoric acid, 9¼ %; potash, 1½ %.

Q. What did each bag have on it with reference to the name and brand of the fertilizer and the name of the fertilizer manufacturer?

A. The brand was Patapsco guano, manufactured by the Patapsco Guano Company, Baltimore; weight stated to be 300 pounds. I think, also, it stated "Registered in Virginia and North Carolina."

Q. Just before the bill in this suit was filed who was your agent for the sale of fertilizer in the city of Raleigh?

A. The firm of M. T. Norris & Bro.

Q. What effect did your declining to pay the tonnage tax have upon the action of this agent?

A. He declined to handle the goods.

Q. Do you know anything of the railroads in the city of Raleigh about this time in refusing to make deliveries of guano because not tagged?

A. I was so informed.

(Objection.)
By the JUDGE: Disallowed.

Q. You have no personal knowledge upon this point?
A. Only through correspondence.
Q. Did you have any correspondence with the commissioner of agriculture upon it?
A. No, sir.
Q. From your general knowledge of the fertilizer business how does the amount of guano sold in Virginia in 1891 and 1892 compare with the aggregate amount sold in North Carolina—more or less?

(Objection.)
By the JUDGE: Disallowed.

A. There is no means of telling about the sales in Virginia; there are no statistics.

Q. I ask you this question with reference to the State of
150 Georgia.

(Objection.)
By the JUDGE: Disallowed. No qualification as expert.

A. The sales in Georgia are considerably larger than in North Carolina.
Q. What tax do you pay in Georgia?

(Objection.)
By the JUDGE: Allowed.

A. Ten cents per ton.
Q. That, I understand, is tax your company actually paid in Georgia?

(Objection.)
By the JUDGE: Allowed.

—. Yes, sir.
Q. Is that the only tax?

(Objection.)

A. Yes, sir.
Q. Do you know what is the cost of the analysis and inspection of fertilizers in Georgia for 1892?

(Objection.)
By the JUDGE: Disallowed.

—. I only know from the reports of the commissioner of agriculture of Georgia, which show that the tax of 10c. pays all expenses and leaves a surplus.
Q. Do you know what was the cost of inspection and analysis in Virginia?

(Objection.)
By the JUDGE: Disallowed.

A. I only know from the statement made in the report of the commissioner of agriculture of that State. He has set them out in detail. I have footed them up in 1892 to be within $5,000. There is an appropriation of $5,000 for this work.

Q. How many chemists and assistant chemists are engaged in this analysis work in the State of Virginia?

(Objection.) (Disallowed.)

—. In the State of Virginia I see in the report of expenses the name of the chief chemist, Mr. Gaines, and the name of two other gentlemen, but one of them occurs only once, so I imagine he is only employed temporarily.

Q. Can you state accurately the amount of the salary of the employees engaged in the analysis of fertilizers in the State of Virginia?

(Objection.) (Disallowed.)

Question by COMMISSIONER: Do you know these matters of your own knowledge or are you answering from hearsay?

A. In this instance I am testifying from a printed report,
151 which states that the salaries of employees of the fertilizer fund sums up $3,112.50.

Q. What was the expenses for laboratory for that year?

(Objection.)

A. $512.45.
Q. And for other expenses?
A. $123.11.
Q. For publications?
A. $21.86.
Q. For printing and stationery?
A. $198.76.
Q. For rent?
A. $300.00.
Q. I will ask you what were the expenses for inspection?
A. $197.16.

(Objection to all of the above questions and answers on the ground that they are immaterial and that the witness has testified purely from hearsay.)

By the JUDGE: Not expert. Objection not considered.

WM. H. GRAFFLIN.

Sworn & subscribed before me this 29th day of May, 1893.

W. T. SMITH, *Com'r.*

152 Col. HINSDALE, att'y for plaintiff: I offer in evidence the report of the commissioner of agriculture dated Sept. 30th, 1890, and appearing on pages 8 and 9 of the report of the State board of agriculture of Virginia for 1890. Ex. No. "11."

I offer now the report of the commissioner of agriculture of the State of Virginia dated Sept. 28th, 1891, and contained on

pages 9 and 10 of the report of the State board of agriculture of Virginia for 1891. Ex. No. "12."

I offer now the report of the State board of agriculture of Virginia, on pages 3 and 4 of the printed report of the State board of agriculture of Virginia, and also the report of expenditures of the agricultural department by the commissioner from 1st October, 1891, to Sept. 30th, 1892, on pages from 15 to 24, inclusive, of the same printed report. Ex. No. "13."

All these reports are objected to by the defendant as immaterial and irrelevant and not proper proof.

(By the JUDGE: Allow-.)

The plaintiff offers the general law as to inspection, analyses, and sale of fertilizers, No. 721, entitled "An act to amend and consolidate the laws governing the inspection, analyses, and sale of commercial fertilizers, chemicals, and cotton-seed meals in the State of Georgia and to repeal all other laws and parts of laws in conflict therewith, and for other purposes," contained in the official volume of the laws of the State of Georgia.

On the title-page the book produced reads as follows: Acts and resolutions of the General Assembly of the State of Georgia, 1890 and 1891. Volume I. Compiled and published by authority. Atlanta, Georgia. George W. Harrison, State printer. Franklin publishing house, 1891. On the second page: George W. Harrison, State printer, Atlanta, Georgia. The following is a copy
153 of the law as taken from this volume of the laws which is deposited in the supreme court library:

154 Georgia Laws, 1890–1891, vol. I.

General Law as to Inspection, Analysis, and Sale of Fertilizers.

No. 721.

An act to amend and consolidate the laws governing the inspection, analysis, and sale of commercial fertilizers, chemicals, and cotton-seed meal in the State of Georgia, and to repeal all other laws and parts of laws in conflict therewith, and for other purposes.

SECTION I. Be it enacted by the General Assembly of the State of Georgia, That all manufacturers of, or dealers in, commercial fertilizers, or chemicals or cotton-seed meal to be used in manufacturing the same, who may desire to sell, or offer for sale, in the State of Georgia, such fertilizers, chemicals or cotton-seed meal, shall first file with the commissioner of agriculture of the State of Georgia the name of each brand of fertilizers or chemicals which he or they may desire to sell in said State, either by themselves or their agents, together with the name of the manufacturer, the place where manufactured, and also the guaranteed analysis thereof, and if the same fertilizer is sold under different names, said facts shall be so stated, and the different brands that are identical shall be named.

SEC. II. Be it further enacted, That all fertilizers, or chemicals for manufacturing the same, and all cotton-seed meal, offered for sale or distribution in this State, shall have branded upon or attached to each bag, barrel or package the guaranteed analysis thereof, showing the percentage of valuable elements or ingredients such fertilizer or chemical contains, embracing the following determinations:

155 Moisture, at 212 degrees Fahrenheit, — per cent.
Insoluble phosphoric acid, — per cent.
Available phosphoric acid, — per cent.
Ammonia, actual and potential, — per cent.
Potash (K_2O), — per cent.

The analysis so placed upon or attached to any fertilizer or chemical shall be a guarantee by the manufacturer, agent or person offering the same for sale that it contains substantially the ingredients indicated thereby, in the percentages named therein, and said guarantee shall be binding on said manufacturer, agent or dealer, and may be pleaded in any action or suit at law to show total or partial failure of consideration in the contract for the sale of said fertilizer, chemical or cotton-seed meal.

SEC. III. Be it further enacted, That it shall be the duty of the commissioner of agriculture to forbid the sale of either of the following: Any acid phosphate which contains less than ten per centum of available phosphoric acid; any acid phosphate with potash which contains a sum total of less than ten per centum of available phosphoric acid and potash when the per cents. of the two are added together; any acid phosphate with ammonia which contains a sum total of less than ten per centum of available phosphoric acid and ammonia when the per cents. of the two are added together; any acid phosphate with ammonia and potash which contains a sum total of less than ten per centum of available phosphoric acid, ammonia and potash when the per cents. of the three are added together; that no brands shall be sold as ammoniated superphosphates unless said brands contain two per cent. or more of ammonia; and also to forbid the sale of all cotton-seed meal which is shown by official analysis to contain less than seven
156 and one-half per centum of ammonia. Nothing in this act shall be construed to nullify any of the requirements of an act entitled An act to require the inspection and analysis of cotton-seed meal.

SEC. IV. Be it further enacted, That all persons or firms who may desire or intend to sell fertilizers, chemicals or cotton-seed meal in this State shall forward to the commissioner of agriculture a printed or plainly written request for the tags therefor, stating the name of the brand, the name of the manufacturer, the place where manufactured, the number of tons of each brand and number of tags required, and the person or persons to whom the same is consigned, the guaranteed analysis, also the number of pounds contained in each bag, barrel or package in which said fertilizer, chemical or cotton-seed meal is put up; and shall, at the time of *of* said request for tags, forward directly to the commissioner of agriculture the

sum of ten cents per ton as an inspection fee; whereupon, it shall be the duty of the commissioner of agriculture to issue tags to parties so applying, who shall attach a tag to each bag, barrel or package thereof, which, when so attached to said bags, barrels or packages, shall be *prima facie* evidence that the seller has complied with the requirements of this act. Any tags left in the possession of the manufacturers or dealers at the end of a season shall not be used for another season, nor shall they be redeemable by the department of agriculture.

SEC. V. Be it further enacted, That it shall not be lawful for any person, firm or corporation, either by themselves or their agents, to sell or offer for sale, in this State, any fertilizer chemical or cotton-seed meal without first registering the same with the commissioner of agriculture, as required by this act, and the fact that the purchaser waives the inspection and analysis thereof, shall be
157 no protection to said party so selling or offering the same for sale.

SEC. VI. Be it further enacted, That the commissioner of agriculture shall appoint twelve inspectors of fertilizers or so many inspectors as in said commissioner's judgment may be necessary who shall hold their offices for such terms as said commissioner of agriculture shall in his judgment think best for carrying out the provisions of this act. The greatest compensation that any one inspector of fertilizers shall receive shall be at the rate of one hundred dollars per month, and his actual expenses, while in the discharge of his duty as such inspector. It shall be their duty to inspect all fertilizers, chemicals or cotton-seed meal that may be found at any point within the limits of this State, and to go to any point when so directed by the commissioner of agriculture, and shall see that all fertilizers, chemicals or cotton-seed meal are properly tagged.

SEC. VII. Be it further enacted, That each inspector of fertilizers shall be provided with bottles in which to place the samples of fertilizers, chemicals or cotton-seed meal drawn by him, and shall also be provided with leaden tags, numbered in duplicate from one upward, and it shall be the duty of each inspector of fertilizers to draw a sample of all fertilizers, chemicals and cotton-seed meal that he may be requested to inspect, or that he may find uninspected, and he shall fill two sample bottle- with each brand, and place one leaden tag of the same number in each sample bottle, and shall write plainly on a label on said bottles the number corresponding to the number on said leaden tags in said bottles, and shall also write on the label on one of said bottles, the name of the fertilizer, chemical or cotton-seed meal inspected, the name of the manufacturer, the place where manufactured, the place where in-
158 spected, the date of the inspection, and the name of the inspector, and shall send or cause to be sent to the commissioner of agriculture the samples so drawn by him annexed to a full report of said inspection, written on the form prescribed by said commissioner of agriculture, which report must be numbered to correspond with the number on said sample bottles, and number

on the leaden tags placed therein; and it shall also be the duty of said inspectors of fertilizers to keep a complete record of all inspections made by them on forms prescribed by said commissioner of agriculture. Before entering upon the discharge of their duties they shall take and subscribe, before some officer authorized to administer the same, an oath faithfully to discharge all the duties which may be required of them in pursuance of this act.

SEC. VIII. Be it further enacted, That the commissioner of agriculture shall have the authority to establish such rules and regulations in regard to the inspection, analysis and sale of fertilizers, chemicals and cotton-seed meal, not inconsistent with the provisions of this act, as in his judgment will best carry out the requirements thereof.

SEC. IX. Be it further enacted, That it shall be the duty of the commissioner of agriculture to keep a correct account of all money received from the inspection of fertilizers, and to pay the same into the treasury, after paying out of said sum the expenses and salaries of the inspectors, and for the tags and bottles used in making such inspections.

SEC. X. Be it further enacted, That all contracts for the sale of fertilizers or chemicals in the State of Georgia, made in any other manner than as required by this act, shall be absolutely void; provided, that nothing in this act shall be construed to restrict or void sales of acid phosphate, kainit or other fertilizer
159 material in bulk to each other by importers, manufacturers or manipulators, who mix fertilizer material for sale.

SEC. XI. Be it further enacted, That any person selling or offering for sale any fertilizers or chemicals, without first having complied with the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof shall be punished as prescribed in section 4310 of the Code of Georgia.

SEC. XII. Be it further enacted, That all laws and parts of laws in conflict with this act be, and the same are, hereby repealed.

Approved October 19, 1891.

160 The defendant objects to this evidence as irrelevant and immaterial and not properly proven.

By the JUDGE: Allowed.

* The plaintiff reserves the right to produce the original volume upon the hearing of this case.

The defendant does not consent to this.

The plaintiff now offers chapter 81, under title 25, of the printed Code of Virginia of 1887, contained in said volume on pages 463, 464, and 465.

The title page of the volume produced reads as follows:

"The Code of Virginia, with the Declaration of Independence and the Constitution of the United States and the constitution of Virginia. Published pursuant to the act of the General Assembly

* No point was made on the argument as to the manner of authentication of the reports, &c., introduced in evidence.

of Virginia. Approved May 21, 1887. A. R. Micou, superintendent of public printing. Seal of Virginia. *Sic semper tyrannis.* Richmond: Printed by James E. Good. 1887."

On the second page: "Copyrighted for the Commonwealth of Virginia by Henry W. Flournoy, secretary of the Commonwealth."

The following is a copy of the law:

161 *Code of Virginia*, 1887.

Ch. 81. Page 463.

Title 25.

SEC. 1784. Commissioner of agriculture.—The department of agriculture shall be continued and be under the control and management of one officer, who shall be known as "the commissioner of agriculture."

SEC. 1785. His appointment, term and bond.—He shall be appointed by the governor, by and with the advice and consent of the senate. His term of office shall be two years, beginning on the first day of January next succeeding the expiration of the term for which the commissioner in office at the time this code takes effect was appointed, who shall continue in office until his term shall have expired by limitation. The appointment shall be made biennially and prior to the day on which the term of the incumbent shall expire. Vacancies in the office shall be filled by the governor. Before the commissioner shall act as such, he shall qualify as provided by law, and execute before the governor a bond with sufficient surety, in the penalty of ten thousand dollars, with condition for the faithful discharge of the duties of his office.

SEC. 1786. His office.—The office of the commissioner shall be at the capital of the State. The register of the land office shall provide the same and the furniture therefor.

SEC. 1787. Clerk, chemist and geologist.—The commissioner shall be allowed one clerk, and may employ a chemist and a geologist to assist him in the performance of such of the duties imposed upon him as may require such assistance.

SEC. 1788. His duties.—The duties of the said commis-
162 sioner shall be as follows:

First, to prepare hand book.—He shall prepare, as soon as may be (if it has not been done), a hand book containing a description of the minerals and geological formation of the several counties of the State, an estimate of the general capacity and character of the soil of each county, a careful analysis of the soil, and information as to its adaptation to the various agricultural products;

Second, to examine and test fertilizers; when sale prohibited.—He shall have under his charge the analysis of fertilizers sold to be used for agricultural purposes in this State. A fair sample of every fertilizer (except agricultural lime, agricultural *sale*, ground plaster, wood ashes, and German potash), proposed to be sold for such use, shall, before such sale, be furnished to the said commissioner, who shall examine and thoroughly test the same. If he shall find the fertilizer when so examined and tested, to be of no practical value

as a fertilizer, he shall notify the parties interested of the fact, and give them a fair opportunity to correct any injustice which may have been done them by mistake, accident, or otherwise. If thereupon he shall still find that the fertilizer is of no practical value as such, the sale thereof for use in this State as a fertilizer shall be prohibited. If any person sell any fertilizer (not one of the fertilizers above excepted) to be used as such in this State, without having first submitted a fair sample thereof to the said commissioner to be examined and tested as aforesaid, or sell the same to be used as a fertilizer in this State, after it has been found as aforesaid to be of no practical value as a fertilizer, he shall be fined for each offence not less than one hundred nor more than one thousand dollars, one-half of which shall go to the informer and the other half to the Commonwealth. No fees shall be charged by the commissioner
163 for any analysis of fertilizers under the provisions of this chapter.

Third, mining and manufacturing statistics.—He shall give attention to the mining and manufacturing interests of the State and collect such statistical information in respect thereto as may be useful, or tend to foster and encourage the same;

Fourth, cabinet of minerals.—He shall establish (if it has not already been done), in his office or some place convenient thereto, a cabinet, in which he shall deposit such specimens of rock, coal, ores, metals, and other mineral substances of the State, and of manufactured articles and models of inventions useful to the agricultural and industrial pursuits of the State, as he can conveniently obtain. He shall carefully label the specimens, designating the counties from which they were obtained, or the places where they were manufactured or made, as the case may be, and arrange them in proper order for public inspection. He shall also keep in his office or cabinet, conveniently arranged and open to the inspection of the public, all maps, surveys, and books and papers of a public character, belonging to the department;

Fifth, special investigation of matters pertaining to agriculture, &c.—He shall inquire into and investigate matters pertaining to the cultivation of the soil and raising of crops, horticulture and fruit growing, the dairy, cattle and sheep raising, diseases of grain, fruit and other crops, and the remedies therefor, injury to crops by insects and the prevention thereof, irrigation, and enclosures; and, in general, whatever relates especially to the agricultural interests of the State;

Sixth, listribution of seeds.—He shall make arrangements for the importation of such seeds as he may deem of value to the people of this State and for the exchange of seeds of other States or
164 foreign countries for the seeds of this State. He shall provide for the careful and judicious distribution among the people of the State of the seeds thus obtained and such as may be received by him from the Government of the United States; and such distribution shall be under his exclusive supervision and control;

Seventh, publication of information; annual report.—He shall,

from time to time, give information upon the above subjects to the people of this State by circulars or pamphlets distributed through the agricultural associations or clubs in the State, and, if there be special need for it in any case, by publication in one or more newspapers in the State. He shall moreover, on the first day of November in each year, make a report to the governor, who shall communicate the same to the General Assembly at its first session thereafter. He shall state in his report what official duties he has performed during the year, and give such information and make such suggestions touching the agricultural interests of the State as he may deem useful.

SEC. 1789. Rules and regulations.—The said commissioner shall have power to make such rules and regulations, not inconsistent with the general law, as may be necessary for the due administration of the business of the department of agriculture under the provisions of this chapter.

SEC. 1790. Annual appropriation.—The sum of five thousand dollars per annum is hereby appropriated for the support and maintenance of the said department and the payment of the employees thereof, and no greater amount shall be expended for these purposes in any one year. It shall be drawn from the treasury by the commissioner under such rules and regulations as the governor shall prescribe.

165 This is objected to by the defendant as irrelevant, immaterial, and not properly proven.

By the JUDGE: Allowed.

The plaintiff reserves the right to produce the original volume on the hearing of this case.

To this the defendant does not consent.

The suit of The American Fertilizer Company against The Board of Agriculture of North Carolina, lately pending in this court, was commenced on the — day of —— and was determined on the — day of ——, the opinion being published in — volume of the Federal Reporter, on page —.

The defendant objects, not to the mode of proof, but to the subject-matter, as irrelevant and immaterial.

166 And I certify that the depositions were taken, sworn to, and subscribed as hereinbefore set forth, and the exhibits offered are herewith filed and marked as therein set forth.

W. T. SMITH,
Commissioner.

167 STATE OF VIRGINIA, }
City of Richmond. }

I, Thomas Whitehead, commissioner of agriculture of the State of Virginia, do hereby certify that the pamphlet hereto annexed, entitled Report of the State Board of Agriculture of Virginia for 1890, is a true copy of the original report which is on file in my office, the same having been published by the superintendent of public

printing under authority of law and being an official copy of the said original.

Witness my hand and official seal, in the city of Richmond, this 20th day of May, 1893.

THOMAS WHITEHEAD,
Com'r of Agr.

168 EXHIBIT 11.

COMMONWEALTH OF VIRGINIA:

I, P. W. McKinney, governor of the Commonwealth of Virginia, certify that Thomas Whitehead, whose name is signed to the within certificate, bearing date the 20th day of May, 1893, is and was at the time of signing commissioner of agriculture of the State of Virginia, duly appointed and qualified; that he is authorized by the laws of this State to make and sign such certificate, and that said certificate is in due form and is made by the proper officer, and that to all of his official acts full faith, credit, and authority are due and ought to be given.

In testimony whereof I have set my hand as governor and caused the great seal of State to be affixed. Done at the city of Richmond this 25th day of May, 1893, and in the 117th year of the Commonwealth.

P. W. McKINNEY, *Governor.*

By the governor:
H. W. FLOURNOY,
Secretary of the Commonwealth and Keeper of the Seal.

169 *Report of the Commissioner of Agriculture.*

Commonwealth of Virginia, department of agriculture.

RICHMOND, VA., *September 30th*, 1890.

To the president and members of the State board of agriculture.

GENTLEMEN: I have the honor to present the following report of the work done and money expended in this department for the fiscal year ending 30th September, 1890.

The appropriation made to the department was $10,000. The new fertilizer law produced $8,100, and out of this the cost of carrying out that law was first to be paid. This was $3,034.12, leaving $5,065.88, which went into the treasury in part payment of the appropriation of $10,000.

The auditor decided that the sums paid out by warrant of this department for expenses of chemical department were to be deducted from the $10,000 appropriated, and that the board could expend no more than $10,000 unless the fertilizer funds exceeded $10,000, and then could only expend such excess.

The board applied to the attorney general for his opinion, believing that under the new fertilizer law the chemical department was to be supported first out of the fertilizer fund, and then any balance

of that fund would go into the treasury of the State, and that $10,000 should be to their credit to be repaid only by any excess of receipts over expenditures in the execution of the fertilizer law, if any such excess.

The opinion of the attorney general was received, which the board believed sustained them; but, as no case could be made for judicial decision before the $10,000 was exhausted, nothing was done,
170 and the board proceeded to restrict their expenditures inside the $10,000, necessarily curtailing immigration and other subjects on account of the increased cost of the chemical department under the new act.

Of the $10,000 appropriated the board has expended $8,446.25, $3,034.12 of which sum was for the chemical department for seven months under the new fertilizer act.

There has been paid to the State treasurer $8,100 under the new act and $300 under the old law, making $8,400 paid by this department into the treasury during the fiscal year, a sum lacking only $46.25 of the whole amount expended for the annual appropriation, and this balance is reduced $41.38, reported in contingent fund received from county immigration agents, making the excess of expenditures of the department over receipts $4.87.

I herewith file the opinion of the attorney general by direction of the board.

I herewith file an itemized account of all expenditures in the department, including the small amount of contingent fund remaining on hand, accompanied by vouchers for such expenditures.

I have the honor to submit for your consideration herewith the twelfth annual report of the commissioner of agriculture, required by law to be made to the governor of the State. I also file the report of the chemist, Mr. R. H. Gaines, and that of the inspector and sampler of fertilizers, Mr. Irving P. Whitehead.

Respectfully submitted.

THOMAS WHITEHEAD,
Commissioner of Agriculture.

171 STATE OF VIRGINIA, }
City of Richmond, }

I, Thomas Whitehead, commissioner of agriculture of the State of Virginia, do hereby certify that the pamphlet hereto annexed, entitled Report of the State Board of Agriculture of Virginia for 1891, is a true copy of the original report which is on file in my office, the same having been published by the superintendent of public printing under authority of law and being an official copy of the said original.

Witness my hand and official seal, in the city of Richmond, this 20th day of May, 1893.

THOMAS WHITEHEAD,
[SEAL.] *Com'r of Agr.*

172 EXHIBIT 12.

COMMONWEALTH OF VIRGINIA:

I, P. W. McKinney, governor of the Commonwealth of Virginia, certify that Thomas Whitehead, whose name is signed to the within certificate, bearing date the 20th day of May, 1893, is and was at the time of signing commissioner of agriculture of the State of Virginia, duly appointed and qualified; that he is authorized by the laws of this State to make and sign such certificate, "and that said certificate is in due form and is made by the proper officer," and that to all of his official acts full faith, credit, and authority are due and ought to be given.

In testimony whereof I have set my hand as governor and caused the great seal of State to be affixed. Done at the city of Richmond this 25th day of May, 1893, in the 117th year of the Commonwealth.

P. W. McKINNEY, *Governor.*

By the governor:

H. W. FLOURNOY,
Secretary of the Commonwealth and Keeper of the Seal.

173 *Report of the Commissioner of Agriculture.*

DEPARTMENT OF AGRICULTURE,
RICHMOND, *September 28th*, 1891.

To the president and members of the State board of agriculture.

GENTLEMEN: I have the honor to present the following report of the work done and money expended in this department for the fiscal year ending 30th September, 1891:

The regular routine work of the department has considerably increased. The collection and examination of minerals and ores, soils and fertilizing material, is much greater. The reports of insects and diseases of plants to the department and the necessary investigation to suggest remedies is much greater than ever before.

Three farmers' institutes have been held this year under the resolution of the board and had given great satisfaction, and many other localities desired to have them, but could not come within the requirements of the board. Besides this, your commissioner felt it his duty, under former advice of the board, to attend a number of agricultural gatherings held by granges, clubs, and agricultural societies to give aid and help to the work of agricultural development, and he has been compelled from pressure of business to decline a very large number.

The collection of statistics in regard to the crops, stock, fruit, and vegetables of the State, as well as the enquiry about the settlement and condition of immigrants, has been greater and more thorough than heretofore, though I am compelled still to report that without

legislation it is impossible to get full and accurate statistics on these subjects.

The work of the pomological committee has been earnest
174 and at last successful in bringing the State to the front among the fruit-producing areas. These duties have not only increased the work of the department office, but necessarily the expenditures for printing and postage. The employees of the department have discharged their duties faithfully and well.

From the report of the department chemist and inspector herewith filed, it will be seen that the consumption of fertilizers in the State has greatly increased, and that the work of analyzing, inspecting, and investigating, in order to give satisfaction to purchasers, has greatly increased and has been well done.

The appropriation made to the department for all purposes is $10,000. The work in the chemist's department produced $7,600, which went into the treasury of the State, leaving $2,400 of the appropriation of $10,000 to be used by your board.

Expenditures for all purposes are by warrant $10,135.20 and out of the contingent fund $36.75 and were made by warrant for the following purposes: For immigration, $1,557.62; for printing, $1,446.20; for postage, $380; for farmers' institutes, $890.11; for salaries of employees, $3,672.50; for rent, $750; for laboratory, $400.72; expenses of board, $798.65; incidentals, $74.13; publication, $58.12. The fertilizer law requires that its expenditures shall be kept separate and distinct. It produced $7,600 and there was expended for carrying on its work $4,233.29, leaving $3,366.71 going into the treasury without consideration to the farmers and planters who paid it.

I herewith file an itemized account, supported by proper vouchers, including that for small items paid out of the contingent fund. I also file herewith, for consideration of the board, the thir-
175 teenth annual report of the commissioner of agriculture, required by law to be made to the governor.

All of which is respectfully submitted.

THOMAS WHITEHEAD,
Commissioner of Agriculture.

176 CITY OF RICHMOND:

I, Thomas Whitehead, commissioner of agriculture of the State of Virginia, do hereby certify the pamphlet hereto annexed, entitled Report of the State Board of Agriculture of Virginia for 1892, is a true copy of the original report which is on file in my office, the same having been published by the superintendent of public printing under authority of law and being an official copy of the original.

Witness my hand and official seal, in the city of Richmond, this 20th day of May, 1893.

[SEAL.] THOMAS WHITEHEAD,
Com'r of Agr.

177 EXHIBIT 13.

COMMONWEALTH OF VIRGINIA:

I, P. W. McKinney, governor of the Commonwealth of Virginia, certify that Thomas Whitehead, whose name is signed to the within certificate, bearing date the 20th day of May, 1893, is and was at the time of signing commissioner of agriculture of the State of Virginia, duly appointed and qualified; that he is authorized by the laws of this State to make and sign such certificate, and that said certificate is in due form and is made by the proper officer, and that to all of his official acts full faith, credit, and authority are due and ought to be given.

In testimony whereof I have set my hand as governor and caused the great seal of State to be affixed. Done at the city of Richmond this 25th day of May, 1893, and in the 117th year of the Commonwealth.

P. W. McKINNEY, *Governor.*

By the governor:

H. W. FLOURNOY,
Secretary of the Commonwealth and Keeper of the Seal.

178 *Report of the State Board of Agriculture.*

To his excellency P. W. McKinney, governor of Virginia.

SIR: I have the honor to submit the fifth annual report of the State board of agriculture, to which your attention is invited.

The board has found itself somewhat embarras-ed by the terms of appropriation. While the amount has been somewhat increased, there is lack of authority from the legislature to use any part of the fund appropriated directly for immigration.

The annual appropriation of $10,000 has, by the largely increased work of the department, been insufficient for the expenses in properly carrying out the intention of the legislature and the wishes of the people. The amount received from fertilizer fees and work in the laboratory has in the past been put in gross into the treasury.

The last appropriation act struck out that proviso, but it was too late in the fiscal year for the board to avail itself of it fully, and only a part could be used, and $4,471.38 *was* returned to the treasury on the 30th of September, which include $529.22 for the general appropriation. Legislation, distinct and simple, is greatly needed in regard to fertilizer control and the direct application of the money arising from the work of the department laboratory.

The board has been quite successful in holding farmers' institutes in different sections of the State, and, while the attendance of farmers has been generally small, the addresses of the distinguished gentlemen invited to address these institutes have been so full and
179 valuable in the interests of agriculture and diversified industries that the board has deemed it proper to publish most

of them in the annual reports for the instruction of the people of the State.

The inspection and analyses of fertilizers has been much larger than in any previous year, and has been attended with greatly increased labor and cost.

By the action of the legislature the expenses of the department have been considerably increased by the cost of transportation of all officers and employees of the department, which was heretofore granted free of charge.

The board has taken active measures to secure at an early day the publication of a hand book, as required under the law. It is their purpose to make this hand book as full as possible, embracing a report of each county in the State as well as a general report embracing all the information necessary to give a full exhibit of population and products, etc., of the different counties and sections of the State, with an accurate map of Virginia and also a map and chart of her geological deposits, together with such other literature as may be deemed necessary for the interest and information of the farmers of Virginia and other persons seeking the same.

It is their purpose to publish a sufficient number of hand books, with an ample supply of other literature, to supply the farmers and others of Virginia and also for distribution among the visitors at the World's fair, which will, in the opinion of the board, afford such facilities for making Virginia known as has never been offered before. It is a source of congratulation that the farmers of Virginia during the present year have given more attention to diversified crops than heretofore; and while their surplus of all the various products will have to be disposed of at a low price, they will
180 have a better supply of food at home than for many years previous.

We would respectfully submit for your consideration the enactment of such laws as will secure a full and accurate annual statistical report as will furnish reliable information as to population, crops of the various kinds, new industries, etc., as will hereafter show in all respects the growth and improvement of the State in reliable form, as is provided for in most of the States.

We would direct your special attention to the very full and elaborate report of the commissioner and the accompanying documents, and especially his suggestion for the purchase of an experiment farm to be operated largely by convict labor under the direction of the board.

This is a new question in this State; and while the board is not fully prepared to endorse the suggestion, they are of the opinion that under proper regulation of law it might be operated with some profit to the State and the experiment might furnish the farmers and others in Virginia valuable and reliable information. The operation and success in other States are well worthy of your investigation in forming a conclusion on this subject.

We deem it proper to state that the commissioner and all the employees have discharged their respective duties well and in a manner satisfactory to the board.

We would most respectfully direct your attention to the suggestions for legislation on various subjects for the benefit of the farmers of Virginia contained in our last annual report for such action as you may deem proper. We have seen no reason to change our opinion upon the recommendations then made, and hope that some future legislature will take up these various subjects and give them the consideration we think they demand.

Respectfully submitted.

W. T. SUTHERLIN, *President.*

181

Ex. 13.

Fertilizer Fund.

Salaries of employees.

1891.			
Oct.	27.	To R. H. Gaines, chemist, salary October, warrant 163	$125 00
		I. P. Whitehead, inspector, salary October, warrant 164	75 00
		B. F. Finney, assistant chemist, salary October, warrant 165	75 00
		William Baker, porter, salary October, warrant 166	12 50
Nov.	25.	R. H. Gaines, chemist, salary November, warrant 167	125 00
		I. P. Whitehead, inspector, salary November, warrant 168	75 00
		William Baker, porter, salary November, warrant 169	12 50
Dec.	24.	R. H. Gaines, chemist, salary December, warrant 171	125 00
		I. P. Whitehead, inspector, salary December, warrant 172	75 00
		William Baker, porter, salary December, warrant 173	12 50
1892.			
Jan.	30.	I. P. Whitehead, inspector, salary January, warrant 176	75 00
		R. H. Gaines, chemist, salary January, warrant 177	125 00
		William Baker, porter, salary January, warrant 178	12 50
Feb.	29.	R. H. Gaines, chemist, salary February, warrant 183	125 00
		I. P. Whitehead, inspector, salary February, warrant 184	75 00
		William Baker, porter, salary February, warrant 185	12 50
Mar.	31.	R. H. Gaines, chemist, salary March, warrant 186	125 00
		I. P. Whitehead, inspector, salary March, warrant 187	75 00
		G. de Chalmot, assistant chemist, salary (half) March, warrant 188	37 50
		William Baker, porter, salary March, warrant 189	12 50
Apr.	30.	R. H. Gaines, chemist, salary April, warrant 200	125 00
		I. P. Whitehead, inspector, salary April, warrant 201	75 00
		G. de Chalmot, assistant chemist, salary April, warrant 202	75 00
		William Baker, porter, salary April, warrant 203	12 50
May	31.	R. H. Gaines, chemist, salary May, warrant 211	125 00
		I. P. Whitehead, inspector, salary May, warrant 212	75 00
		G. de Chalmot, assistant chemist, salary May, warrant 213	75 00
182			
		William Baker, porter, salary May, warrant 214	12 50
Jun-	30.	R. H. Gaines, chemist, salary June, warrant 222	125 00
		I. P. Whitehead, inspector, salary June, warrant 223	75 00
		G. de Chalmot, assistant chemist, salary June, warrant 224	75 00
		William Baker, porter, salary June, warrant 225	12 50
July	30.	R. H. Gaines, chemist, salary July, warrant 233	125 00
		I. P. Whitehead, inspector, salary July, warrant 234	75 00
		G. de Chalmot, assistant chemist, salary July, warrant 235	75 00
		William Baker, porter, salary July, warrant 236	12 50
Aug.	23.	I. P. Whitehead, inspector, salary August, warrant 239	75 00
	31.	R. H. Gaines, chemist, salary August, warrant 241	125 00
		G. de Chalmot, assistant chemist, salary August, warrant 242	75 00
		William Baker, porter, salary August, warrant 243	12 50

Sep.	30.	R. H. Gaines, chemist, salary September, warrant 259	125 00
		G. de Chalmot, assistant chemist, salary September, warrant 260	75 00
		I. P. Whitehead, inspector, salary September, warrant 261.	75 00
		William Baker, porter, salary September, warrant 262	12 50
			$3,112 50

Laboratory.

1891.

Oct.	3.	To Powers, Taylor & Co., chemicals, warrant 157	16 46
	5.	Eimer & Amend, chemicals, warrant 159	147 16
	10.	Eimer & Amend, rubber dick, warrant 161	1 55
1892.			
Mar.	31.	J. H. Brower, repairs to laboratory, warrant 190	5 00
Apr.	4.	Eimer & Amend, chemicals, warrant 193	77 68
	12.	Powers, Taylor & Co., chemicals, warrant 198	16 66
	30.	Eimer & Amend, chemicals, warrant 204	41 47
May	7.	Powers, Taylor & Co., chemicals, warrant 205	16 41
	31.	Eimer & Amend, chemicals, warrant 215	12 99
Jun-	13.	Powers, Taylor & Co., chemicals, warrant 216	29 25
	17.	R. H. Gaines, chemist, expenses trip to consult architect in regard to laboratory of library building, warrant 219	14 00
	25.	Eimer & Amend, chemicals, warrant 220	26 45
Jul-	5.	Powers, Taylor & Co., chemicals, warrant 229	21 87
	20.	Eimer & Amend, chemicals, warrant 232	6 62
Aug.	6.	Powers, Taylor & Co, chemicals, warrant 238	13 61
Sep.	3.	Eimer & Amend, chemicals, warrant 251	5 93
	12.	Powers, Taylor & Co., chemicals, warrant 253	15 16
	21.	Eimer & Amend, chemicals, warrant 258	51 18
			512 45

Incidentals.

1891.

Oct.	8.	To R. H. Gaines for freight and drayage on chemicals, warrant 160	2 61
	14.	R. H. Gaines for contingent expenses of laboratory, warrant 162	5 00
1892.			
Apr.	1.	R. H. Gaines, contingent expenses of laboratory, warrant 191.	10 00
May	20.	James Hayes, repairs, warrant 208	4 00
Jun-	25.	R. H. Gaines, contingent expenses of laboratory, warrant 221.	10 00
	30.	James Hayes, repairs, warrant 227	3 00
Aug.	31.	George D. Pleasants & Son, insurance to August, 1893, warrant 244	10 00
Sep.	3.	Warrant 249 cancelled	
	15.	James Hayes, repairs, warrant 254	5 00
		B. F. Smith, safe for office, warrant 255	70 00
		J. H. Brower, one draining stand, warrant 263	3 50
			$123 11

Publications.

1892.

Apr.	9.	To R. H. Gaines, periodicals, warrant 197	21 86

Printing & stationery.

1892.

Feb.	8.	To Everett Waddey Co., printing, warrant 181		3 00
Apr.	9.	Everett Waddey Co., printing & stationery, warrant	196	20 50
May	11.	Ditto,	206	32 01
June	13.	Ditto,	217	36 75
Jul-	15.	Ditto,	231	67 75
Aug.	27.	Ditto,	240	25 00
Sep.	10.	Ditto,	252	13 75
				198 76

Rent.

1891.				
Oct.	30.	To S. S. Cottrell, quarter ending Sep. 30th, 1891, warrant 158..		75 00
1892.				
Jan.	4.	S. S. Cottrell, quarter ending Dec. 31st, 1891, warrant 174...		75 00
Apr.	4.	S. S. Cottrell, quarter ending March 31st, 1892, warrant 195.		75 00
Jul-	5.	S. S. Cottrell, quarter ending June 30th, 1892, warrant 228..		75 00
				300 00

Expenses board of agriculture.

1892.				
Feb.	8.	To A. H. Tuttle, expenses while attending, by request of board, special committee on fertilizer bill, &c., warrant 180.....		15 65
May	25.	Exchange & Ballard hotel, expenses H. L. Lyman, member special committee on fertilizer bill, &c., warrant 210.....		56 35
				72 00

Postage.

1891.				
Dec.	1.	To Richmond postmaster, warrant 170.....		5 00
1892.				
Feb.	8.	Richmond postmaster, warrant 179.....		30 00
	12.	Ditto, 182.....		45 00
Apr.	1.	Ditto, 192.....		20 00
				100 00
184				
				100 00
June	30.	To Richmond postmaster, warrant 226.....		20 00
				120 00

Expenses of inspection.

1892.				
Jan.	7.	To I. P. Whitehead, expenses inspection, warrant 175...		5 00
Apr.	4.	J. H. Gregg, 1 sample case, warrant 194		3 59
	16.	I. P. Whitehead, expenses inspection, warrant 199		7 73
May	19.	Richmond China Co., 1 gross sample jars, warrant 207.....		9 00
	21.	I. P. Whitehead, expenses inspection, warrant 209.....		17 10
Jun-	15.	Do. 218.....		7 83
July	5.	Do. 230.....		15 25
Aug.	5.	Do. 237.....		9 10
	31.	T. J. Stratton, services as local sampler, warrant 245		10 00
		John D. Potts, D. P. A., C. & O. R. R., 1,000-mile ticket, warrant 246.....		25 00
		R. W. Courtney, P. A. N. & W. R. R., 1,000-mile ticket, warrant 247.....		25 00
		J. S. Potts, P. A. R. & D. R. R., 1,000-mile ticket, warrant 248.		25 00
Sep.	3.	Cottrell, Watkins & Co., 4 tryers, warrant 250.....		8 00
	15.	E. B. Taylor Co., 2 gross sample jars, warrant 256.....		18 00
		Southern Rubber Co., 5 wax seals, warrant 257		6 25
	30.	I. P. Whitehead, expenses inspection, warrant 264.....		5 40
				$197 16

185 UNITED STATES OF AMERICA,
Eastern District of North Carolina.

In the U. S. Circuit Court at Raleigh, Fourth Circuit. In Equity. June Term, 1893.

THE PATAPSCO GUANO COMPANY, for Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties to and Contribute to the Expenses of this Suit,
against
THE BOARD OF AGRICULTURE OF NORTH Carolina and W. S. Primrose, W. F. Green, S. B. Alexander, H. E. Fries, N. B. Broughton, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, Elias Carr, and John Robinson, Commissioner. } Decree Dismissing Bill.

This cause coming on to be heard upon the pleadings, depositions, and exhibits, and being argued by counsel on both sides, the court doth declare that, for the reasons set forth in the opinion heretofore filed in this cause by the court, the plaintiff is not entitled to the relief demanded in its bill, and—

It is therefore ordered, adjudged, and decreed that the plaintiff's said bill be dismissed with costs.

And, upon the motion of the solicitors for the defendant, it is adjudged and decreed that the defendants recover of the plaintiff and its sureties for the prosecution its costs of suit, to be taxed by the clerk.

A. S. SEYMOUR,
Dist. Judge.

BATTLE & MORDECAI AND
BUSBEE & BUSBEE,
Solicitors for Defendants.

Decree dismissing the bill at the costs of the complainant filed July 16, 1893.

N. J. RIDDICK, *Clerk*,
By V. ROYSTER, *Dep. Clerk.*

186 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties to and Contribute to the Expenses of this Suit,

against

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. S. Primrose, W. F. Green, S. B. Alexander, H. E. Fries, N. B. Broughton, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, Elias Carr, and John Robinson, Commissioner of Agriculture.

Assignment of Error.

The plaintiff, The Patapsco Guano Company, having appealed from the final decree of this court in the above-entitled cause to the Supreme Court of the United States, makes the following assignment of errors:

I. That the court below held that the act of the General Assembly of North Carolina entitled "An act to amend chapter one, volume two, of the Code, relating to agriculture and geology," ratified on the 21st day of January, 1891, imposing a tonnage tax of twenty-five cents on each and every ton of fertilizer or fertilizing material made or brought into the State, to be paid before delivery to agents, dealers, and consumers in the State or before a sale or offer to sell the same, and subjecting any person violating the provisions of said act to criminal prosecutions and penalties, is not unconstitutional, null, and void, in that it is repugnant to so much of section eight of article one of the Constitution of the United States as provides that "the Congress shall have power * * * to regulate commerce with foreign nations and among the several States
187 and with the Indian tribes."

II. That it held that said charge or tax is not repugnant to so much of subsection two of section ten of article one of said Constitution as provides that "no State shall, without the consent of Congress, lay any imposts or duties on imports and exports, except what may be absolutely necessary to execute its inspection laws," and therefore is null and void.

III. That it held that said charge or tax is an inspection law within the contemplation of said clause of said Constitution, and therefore constitutional and valid.

IV. That it held that the said charge or tax is applicable by law exclusively to purposes of inspection of fertilizers and fertilizing materials, whereas it should have held that the same, upon the face of the various statutes relating to the subject, is applicable to purposes foreign to inspection, to wit, to pay the salary of the analyst

(Code, section 2196); the expenses of the Geological Museum and publication of the Geology of North Carolina (Code, section 2198); the expenses of preparing hand books, with illustrated maps, in regard to mines, minerals, forests, soils, climates, and water powers, fisheries, mountains, swamps, industries, and other statistics, to give information to immigrants, and to make expositions thereof and to offer premiums (Code, sec. 2199); the expenses of immigration agents (section 2200); the expenses of establishing and keeping a general land and mining registry (section 2201); expenses of the North Carolina Industrial Association, five hundred dollars per year (2206); expenses of the North Carolina Industrial School (Agricultural &
Mechanical College), five thousand dollars per year (Acts
188 1885, ch. 308, section 4; Acts 1887, ch. 2110, sec. 1); the expenses of publication of geological reports. (Acts 1887, ch. 409, sec. 15.)

V. It is held that the said tax is absolutely necessary to execute the inspection of fertilizers, whereas it should have held that the tax is much in excess of what is absolutely necessary therefor.

VI. That the court refused to consider the evidence introduced to show that the amount of money raised by said tax was much in excess of what was absolutely necessary for that purpose.

VII. That the evidence showed that the tonnage tax collected from January 21st, 1891, to January 1st, 1892, was $33,264.08, and the absolutely necessary expenses of executing the inspection did not exceed $10,000, and the court held that this excess was not material to show that the charge was not an inspection law under the Constitution.

VIII. That the evidence showed that the tonnage tax collected from January 1st, 1892, to January 1st, 1893, amounted to $27,690.16, and the necessary cost of inspection did not exceed $10,000, and the court held that this excess was not material to show that it was not an inspection law.

IX. That the *the* evidence showed that the tonnage tax collected for the months of January, February, March, April, and a part of May, 1893, was $22,567.25, and the cost of inspection did not exceed $5,000, and the court held that this excess was not material to show that it was not an inspection law.

X. That the court did not hold that the tax was colorably an inspection charge only.

XI. That the court did not hold that the said charge was
189 excessive, and as such shows a purpose to evade the intentions of the Constitution.

XII. That the court held that said charge is a police regulation and the legislature of North Carolina had the power to exact it.

XIII. That the court held that, notwithstanding the evidence and the admissions in the answer of the defendants show that much the larger portion of said tax was not necessary for purposes of inspection and was appropriated and applied to purposes foreign thereto, that the said act is an inspection law, and said tax is absolutely necessary for executing said law.

XIV. That the court dismissed the bill of the complainants.

T. N. HILL &
J. W. HINSDALE,
Solicitors for Complainant.

Assignment of errors filed Dec. 7, 1893.

N. J. RIDDICK, *Clerk*,
By V. ROYSTER, *Dep. Cl'k.*

190 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, in Behalf of Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties to and Contribute to the Expenses of this Suit,

against

THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. S. Primrose, W. F. Green, S. B. Alexander, H. E. Fries, N. B. Broughton, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, Elias Carr, and John Robinson, Commissioner of Agriculture.

Petition for Appeal & Order Allowing Appeal.

The above-named plaintiff, The Patapsco Guano Company, feeling itself aggrieved at the decree entered at June term, 1893, of said court and filed on June 16th, 1893, in the above-entitled proceeding, doth hereby appeal from the said decree to the Supreme Court of the United States, and it prays that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

T. N. HILL AND
JOHN W. HINSDALE,
Attorneys for Plaintiff and Appellant, Raleigh, N. C.

And now, to wit, Dec. 7th, 1893, it is ordered that the appeal be allowed as prayed for.

A. S. SEYMOUR,
District Judge.

Petition for appeal & order allowing appeal filed Dec. 7th, 1893.

N. J. RIDDICK, *Clerk*,
By V. ROYSTER, *Dep. Clerk.*

191 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, for Itself and All Other Non-resident Dealers and Manufacturers of Commercial Fertilizers Who Shall Come in and Make Themselves Parties Hereto and Contribute to the Expenses of this Suit, Appellant,
against
THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. R. Williams, R. W. Wharton, W. R. Capehart, J. B. Coffield, W. E. Stevens, W. F. Green, J. S. Murrow, J. F. Payne, S. L. Patterson, A. Leazar, C. D. Smith, and John Robinson, Commissioner of Agriculture, Respondents.
} Appeal Bond.

Know all men by these presents that we, The Patapsco Guano Company of Baltimore, Md., and W. H. Grafflin, of Baltimore, Md., are held and firmly bound unto the above-named The Board of Agriculture of North Carolina and W. R. Williams, R. W. Wharton, W. R. Capehart, J. B. Coffield, W. E. Stevens, W. F. Green, J. S. Murrow, J. F. Payne, S. L. Patterson, A. Leazar, C. D. Smith, and John Robinson, commissioner of agriculture, in the sum of five hundred dollars, to be paid to the said The Board of Agriculture of North Carolina and W. R. Williams, R. W. Wharton, W. R. Capehart, J. B. Coffield, W. E. Stevens, W. F. Green, J. S. Murrow, J. F. Payne, S. L. Patterson, A. Leazar, C. D. Smith, and John Robinson, commissioner of agriculture; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 12th day of June, 1893.

Whereas the above-named The Patapsco Guano Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the
192 judge of the circuit court of the United States for the eastern district of North Carolina:

Now, therefore, the condition of this obligation is such that if the above-named The Patapsco Guano Company shall prosecute said appeal to effect and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE PATAPSCO GUANO COMPANY,
By GEO. W. GRAFFLIN, *Pr's't.* [SEAL.]
W. H. GRAFFLIN. [SEAL.]

Sealed and delivered and taken and acknowledged by the Patapsco Guano Company and Wm. H. Grafflin this 10th day of June, 1893, before me—

G. EVETT REARDON,
A Commissioner of Affidavits for the State of North Carolina in the State of Maryland, Residing at Baltimore City, 100 *E. Lexington St.*

STATE OF MARYLAND, }
City of Baltimore. }

Wm. H. Grafflin, being duly sworn, says that he is worth one thousand dollars over and above his debts and liabilities and in excess of his homestead and personal property exemptions.

WM. H. GRAFFLIN. [SEAL.]

Sworn and subscribed before me this 10th day of June, 1893.

G. EVETT REARDON,
A Commissioner of Affidavits for the State of North Carolina in the State of Maryland, Residing at Baltimore City, 100 *E. Lexington St.*

Foregoing bond approved and accepted.

A. S. SEYMOUR,
Dist. Judge.

Dec. 7th, 1893.

193 In the Circuit Court of the United States for the Fourth Circuit and Eastern District of North Carolina, Sitting in Equity.

THE PATAPSCO GUANO COMPANY, Plaintiff, Appellant,
against
THE BOARD OF AGRICULTURE OF NORTH CAROLINA and W. F. Green, W. R. Williams, J. B. Coffield. W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, R. W. Wharton, and John Robinson, Commissioner of Agriculture of North Carolina, Defendants, Respondents. } Citation.

UNITED STATES OF AMERICA, *ss:*

To the Board of Agriculture of North Carolina and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, R. W. Wharton, and John Robinson, commissioner of agriculture of North Carolina, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the sixth day of January, one thousand eight hundred and ninety-four, pursuant to appeal filed in the clerk's office of the circuit court

for the eastern district of North Carolina, wherein The Patapsco Guano Company is appellant and The Board of Agriculture of North Carolina and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, R. W. Wharton, and John Robinson, commissioner of agriculture of North Carolina, are respondents, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 7th day of December, 1893.

A. S. SEYMOUR,
District Judge.

194 No. 163, E.

In the U. S. Circuit Court, Eastern District of North Carolina.

THE PATAPSCO GUANO COMPANY, in Behalf, &c.,
vs.
THE BOARD OF AGRICULTURE OF N. C. *et als.*

Citation filed Dec. 7th, 1893.

N. J. RIDDICK, *Clerk*,
By V. ROYSTER,
Dep. Clerk.

Served on R. H. Battle, attorney for defendant-, by reading the within citation to him and leaving a copy thereof with him.

J. B. HILL, *U. S. M.*,
By C. D. HEARTT, *Dept.*

Dec'r 13th, 1893.

195 United States Circuit Court, Eastern District of North Carolina, at Raleigh.

PATAPSCO GUANO COMPANY, for Itself, &c.,
against
THE BOARD OF AGRICULTURE OF NORTH CAROLINA and Others.

It is stipulated and agreed that the clerk of this court shall not copy and certify in the transcript of record herein for the Supreme Court of the U. S. the affidavits and proceedings in respect to the restraining order or injunction and the exhibits or portions of the same which are attached to the depositions and other portions of the record in this cause which do not appear in the foregoing transcript, the same being unnecessary to said appeal.

THOS. N. HILL &
J. W. HINSDALE,
Solicitors for Complainants.
BATTLE & MORDECAI,
Of Solicitors for Defendants.

Raleigh, N. C., Jan. 2nd, 1894.

196 UNITED STATES OF AMERICA,
Eastern District of North Carolina.

Circuit Court, Fourth Circuit.

I, N. J. Riddick, clerk of the circuit court of the United States for the fourth circuit & eastern district of North Carolina, do hereby certify the above and foregoing to be a full, true, and perfect transcript from the record of all the proceedings which have been had in the cause in said court wherein The Patapsco Guano Company, in behalf of itself and all other non-resident dealers and manufacturers of commercial fertilizers who shall come in and make themselves parties hereto and contribute to the costs and expenses of this suit, are complainants and The Board of Agriculture of North Carolina and W. F. Green, W. R. Williams, J. B. Coffield, W. R. Capehart, W. E. Stevens, J. S. Murrow, J. F. Payne, A. Leazar, S. L. Patterson, C. D. Smith, and John Robinson, commissioner of agriculture, are defendants, as appears from the record of said court remaining in my custody, except the affidavits and proceedings in respect to the restraining order or injunction and the exhibits or portions of the same which are attached to the depositions and other portions of the record in the cause which do not appear in the foregoing transcript and which have been omitted by stipulation of counsel for both parties as unnecessary to be certified on this appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Raleigh, in said district, this 2nd day of January, 1894.

[Seal United States Circuit Court, Eastern Dist. of N. C.]

N. J. RIDDICK,
Clerk United States Circuit Court, Fourth Circuit and Eastern District of North Carolina.

Endorsed on cover: Case No. 15,477. E. North Carolina C. C. U. S. Term No., 620. The Patapsco Guano Company, appellant, *vs.* The Board of Agriculture of North Carolina, W. R. Williams *et al.*, commissioners. Filed January 4th, 1894.

No. 311 Sup. Ct. U.S.

Brief of Hill & Hinsdale for Appellant.

Filed Oct. 16, 1896.

SUPREME COURT OF THE UNITED STATES.

No. 311.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS, *et al.*, APPELLEES.

BRIEF

OF

THOS. N. HILL AND JNO. W. HINSDALE,

COUNSEL FOR APPELLANT.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 620.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS, *et al.*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

Brief of Counsel for Appellant.

STATEMENT OF CASE.

A motion was made by the appellant for an injunction until the final hearing on bill, answer, affidavits and exhibits restraining the defendant from proceeding to enforce the fertilizer tax law of North Carolina against the appellant, its servants, agents or customers. The bill was filed April 4th, 1892. The material portions of said law are set forth in the seventh, eighth, ninth and tenth sections of the bill (pages four, five and six of the printed record).

The bill sets forth substantially (Record, pages 3 to 11) that the complainant was a corporation, duly created, organized and existing under and by virtue of the laws of the state of Maryland, and had been for a number of years engaged, in Baltimore, in the manufacture and sale of manipulated guano or commercial fertilizers of different brands, and that it had over three hundred thousand dollars invested in buildings, machinery and materials used in said manufacture, and that many millions of dollars were invested and used, and thousands of agents and laborers were employed and paid, in the general business of the manufacture of fertilizers for sale in this state and of the sale of the same; and that it had been selling said fertilizers in said state for a number of years, and that it had at great labor and expense built up a profitable business therein; that in con-

ducting its said business in said state, it was obliged to employ a large number of persons in different parts thereof as agents, and without such agents it could not properly or profitably conduct its said business; that its annual business in said state amounted to upwards of one hundred thousand dollars, upon which the profits largely exceeded ten thousand dollars a year; that the season (referring to the time of filing the bill April 4th, 1892) for the sale of fertilizers for use on summer and fall crops had arrived, and the complainant had manufactured a great quantity of goods, for which the demand was large, and was ready to put them on the market, and was continuing and desired to continue to manufacture a large quantity of said goods to meet the further demands of the season as it progressed; that it had already shipped a quantity of said fertilizer into said state for sale, and was shipping more and desired to continue to ship to said state a large quantity to meet the requirements of trade and the public demand; and that the defendants, Board of Agriculture and Commissioner of Agriculture of said state, give out and threaten that they will make seizures of all fertilizers which your orator has shipped or shall ship into this state, unless the same shall be tagged in accordance with the Act of General Assembly of North Carolina entitled "An Act to amend chapter one, volume two, of the Code, relating to agriculture and geology," and ratified on January 21, 1891, (Laws of North Carolina, 1891, p. 40), and that they will institute criminal prosecutions for an alleged misdemeanor against each of your orator's agents, who may sell or offer for sale, and against all other persons to whom your orator may sell for re-sale, upon each and every sale or offer for sale made or to be made or attempted to be made by such agents or other persons."

The bill then sets forth the Acts referred to as follows:

That the said defendants claim that your orator's goods are liable to seizure, and its agents and other purchasers for resale of its fertilizers are liable to criminal prosecutions under sections 2190, 2191, 2192 and 2193 of The Code of North Carolina, amended by the above-entitled act, which read as follows:

Sec. 2190. "For the purpose of defraying the expenses connect-with the inspection of fertilizers and fertilizing materials in this state there shall be a charge of twenty-five cents per ton on such fertilizers and fertilizing materials for each fiscal year ending November 13th, which shall be paid before delivery to agents, dealers or consumers in this state: *Provided*, the Board shall [have] the discretion to exempt certain natural material as may be deemed expedient. Each bag, barrel or other package of such fertilizers or fertilizing materials shall have attached thereto a tag stating that all charges specified in this section have been paid, and the state board of agriculture is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will enable them to enforce this law. Any per-

son, corporation or company who shall violate this chapter, or who shall sell or offer for sale any such fertilizers or fertilizing material, contrary to the provisions above set forth, shall be guilty of a misdemeanor, and all fertilizers or fertilizing materials so sold or so offered for sale shall be subject to seizure and condemnation in the same manner as is provided in this chapter for the seizure and condemnation of spurious fertilizers, subject, however, to the discretion of the board of agriculture to release the fertilizers so seized and condemned upon the payment of the charge above specified and all costs and expenses incurred by the department in such proceeding: *Provided*, that tags shall be attached by manufacturers, agents or dealers to all fertilizers now in the state; those protected under licenses previously issued shall be furnished free of charge."

Sec. 2191. "Every bag, barrel, or other package of such fertilizer or fertilizing materials, as above designated, offered for sale in this state shall have thereon plainly printed a label or stamp, a copy of which shall be filed with the commissioner of agriculture, together with a true and faithful sample of the fertilizer or fertilizing material which it is proposed to sell, at or before delivery to agents, dealers or consumers in this state, and which shall be uniformly used, and shall not be changed during the fiscal year for which tags are issued, and the said label or stamp shall truly set forth the name, location and trade-mark of the manufacturer; also the chemical composition of the contents of such package, and the real percentage of any of the following ingredients asserted to be present, to-wit: soluble and precipitated phosphoric acid, which shall not be less than eight per cent.; soluble potassa, which shall not be less than one per cent.; ammonia, which shall not be less than two per cent., or its equivalent in nitrogen; together with the date of its analyzation, and that the requirements of the law have been complied with; and any such fertilizer as shall be ascertained by analysis not to contain the ingredients and percentage set forth as above provided shall be liable to seizure and condemnation as hereinafter prescribed, and when condemned shall be sold by the board of agriculture for the exclusive use and benefit of the department of agriculture."

Sec. 2192. "The proceedings to condemn the same shall be by civil action in the superior court of the county where the fertilizer is on sale, and in the name of the board of agriculture, who shall not be required to give bond for the prosecution of said action. And at or before the summons is issued, the said board shall, by its agent, make affidavit before the clerk of the said court, of these facts: (1) That charges have been paid as hereinbefore provided and the lawful tags attached. (2) That the sample of the same filed with the commissioner of agriculture has been analyzed under authority of the board and found to correspond with the label attached to the same. (3)

and that said tags were unnecessary, as they communicated no information to the purchaser which he did not have before, and which was not to be obtained from the printed label or stamp which accompanies each package. That if defendants were permitted to seize in every case of shipment or sale, or attempted sale, of the plaintiff's fertilizers, the statute allowing them to do so without giving bond to protect the plaintiff, and if they were permitted to institute criminal prosecutions at their pleasure for selling, or attempting to sell, fertilizers upon which the tax has not been paid, the complainant, its agents and customers would be subjected to a multiplicity of interminable and oppressive suits, equally vexatious and fruitless, and to an avalanche of reckless prosecutions, and that its business in the state would be utterly destroyed and it would suffer irreparable loss and damage.

That the attempt to enforce the law, the threats to do so having been widely circulated, and which must become more and more generally known, and the efforts made by the Commissioner, who was unable to respond in damages, would create a prejudice against fertilizers on which the tax had not been paid and cause many to decline to purchase complainant's goods; that some would entertain fears that purchasers would be subjected to penalties or be involved in trouble in court, or otherwise, and few would investigate the question, or be willing to act upon their own judgment, and unless the illegal tax was paid the goods would have stamped upon them the stigma of illegality and litigiousness, and the trade and business of plaintiff would be irreparably damaged; that within the last few days one of plaintiff's agents in Raleigh has declined to continue to act as such and sell its goods unless tagged, through fear of involving himself in difficulty and criminal prosecution; and likewise, in the last few days, it had shipped to a party in Raleigh a ton of its guano, but the railroad company refused to deliver the same to the consignee because it was not tagged; that said company had been forbidden by the department to deliver any fertilizer not tagged, and if the railroads were thus to be interfered with and prevented from transporting and delivery of its fertilizer in North Carolina, its business in said State would be destroyed and it would suffer irreparable loss and damage; that some of its competitors had purchased the tags, others would do so, and some for the purpose of advancing their own sales, or for error as to the validity of said law, would do what they could to decry its goods as unlawful subjects of sale or purchase, and thus alarm and deter persons from purchasing, for which the complainant would suffer irreparable loss and damage.

That complainant enjoyed a large trade in said state, and that even though the said tax might be declared illegal and its enforcement abandoned, yet the trade which it would have lost

in the meantime for any of said causes it would be impossible to recover, and thus it would be irreparably damaged; that the damage threatened exceeded two thousand dollars.

That it had at all times and expected to continue to comply with the said law except as to the payment of said tax, and had before shipping any fertilizer filed with the Commissioner a true and faithful sample of its fertilizer, with a label setting forth the name, location and trade-mark of the manufacturer, and the chemical composition of said fertilizer, according to the law, and that every bag or package that had been shipped into the state had a stamp or label setting forth the same, and it proposed that such as thereafter should be shipped into the state should have such stamp or label; that it had purchased from the Commissioner certain tags which he required to be attached to each package of two hundred pounds of fertilizers, but it did not propose to attach the same to said packages until and unless the court should give judgment to the contrary; and the foregoing facts and conditions show the immediate great and irreparable loss and damage to which it would be subjected by the enforcement of said law and the public promulgation of the threat to execute the same by seizures and criminal prosecutions.

The answer of the defendants (Record, pages 15 to 18) admits such averments of the bill as are not hereinafter referred to.

It states that the defendants had no knowledge or information sufficient to form a belief as to the capital invested by the complainant in the business, and denied that many millions of capital were invested and thousands of agents and laborers were employed in the manufacture of fertilizers for sale in North Carolina; that defendants had no knowledge or information sufficient to form a belief as to the extent to which complainant had been engaged and its profits, and alleged that unless the complainant had been selling without complying with the law, its purchase of tags, which show the tonnage tax, demonstrate that the statement of its annual business was grossly exaggerated.

Defendants admit that the taxes collected in 1891 were $32,894, but denied that the amount was a fixed sum, and averred that said amount was unusually large and could not be collected again; that the receipts had greatly fallen off in 1892, and defendants could not reasonably expect to collect more than $24,000 in all, and that sum would not be more than necessary to carry on the operations of the Department in its inspection of fertilizers, in the proper analyzation of the same and in publishing the results of such analyses, and in protecting the farmers and citizens of the state against imposition and loss on account of spurious fertilizers. They deny that, under the law, taxes amounting to between $30,000 and $40,000 were annually exacted from the manufacturers of fer-

tilizers doing business in North Carolina, except as in said answer was thereafter admitted.

They deny that the Board of Agriculture pretended anything, and averred that the tax varied in amount from year to year, and it was impossible to foresee the amount of revenue to accrue from it. That in order to raise sufficient revenue to have the fertilizer analyzed, and the people protected against fraud and against spurious and worthless fertilizer being palmed off on them, it was necessary to maintain a department or bureau, to have sufficient executive and clerical force, a staff of chemists to perform the analyses, to keep inspectors in the field at considerable expense, to draw samples of the three hundred and fifty brands used in the state. They deny that not more than one-fifth of the tax was necessary for such purposes, and aver that all of it was necessary. They deny that any unnecessary employees were maintained, and that any part of the fund was applied to the support of the Agricultural and Mechanical College and to the other purposes alleged in the bill, averring that the provisions for such appropriations have been repealed; that in order properly to inspect, analyze and control fertilizers, it was essential that the work be done promptly and accurately, and that a sufficient force be kept throughout the Department to manage executive details, receive money, and fill orders for a million or more tags each year, and a force of inspectors traveling over the state for the purpose of receiving samples of such fertilizers as should be brought to or made in the state, and to prevent the introduction and sale of spurious goods; that a force of chemists be maintained in order to analyze samples, and that the analyses be published and distributed for the information of purchasers; that the number of brands was constantly increasing, now amounting to three hundred and fifty; and the entire amount received from the tax, as well as could be calculated, would be required for the legitimate purposes of the Department. And the defendant, when required, would make a full exhibit of its receipts and expenditures.

The defendants further allege: That the $7,000 paid the Experiment Station June 19, 1891, was paid exclusively for analyses of fertilizers, the payment being made to the Experiment Station because the Experiment Station and Agricultural Department used the same laboratory and, to some extent, the same chemicals, and in this way the work was done economically. The $2,065.57 paid the A. and M. College January 27, 1892, was in repayment of a loan theretofore to the Department by the college. The amount paid for printing bulletins was an important and necessary part of the work. The amount ($9,000) paid to the World's Fair was a loan. The receipts during 1891 were larger than usual, and the Department made a loan to the World's Fair which, in case of deficiency in its rev-

enue, it would seek to have repaid. No such surplus was expected again.

The defendants further aver, that the law is constitutional; that it was imposed for the purpose of paying the expense of inspection, and was not an impost or duty, and deny that said tax was illegal and oppressive, and that the tags did give information which could not be obtained from the labels, and charges the complainant with gratuitous conduct for giving his views of, or criticising the law, and deny the damage claimed. That the railroad company had been required by the department to obey the law, but it had no knowledge or information sufficient to form a belief as to the averments that one of complainant's agents has discontinued to act as such for fear of involving himself in difficulty and criminal prosecution, and that the railroad company had refused to deliver a ton of guano to the consignee, because it was not tagged.

They admit that complainant is ready to comply with any law which does not provide for inspection or analysis or the payment of any tax to have its fertilizers analyzed.

They further claim that the defendants, R. W. Wharton and others (except the Commissioners of Agriculture), are not proper parties, and set up the defence that the Board of Agriculture is one of the departments of the state government, and the circuit Court had no jurisdiction to maintain an action against it.

Replication was filed June 11, 1892. (Record, page 19.)

At November Term, 1892, the complainant's motion was refused and the injunction dissolved. (Record, page 29.)

The evidence offered by complainant appears on printed record, pages 50 to 119 inclusive.

At June Term, 1893, this cause was heard on the pleadings, depositions and exhibits, and the bill was dismissed with costs and judgment was rendered in favor of the defendant and against the plaintiff and sureties for said costs. (Printed Record, page 120).

On the 7th day of December, 1893, complainant filed assignment of errors, and applied for and was granted an appeal to the Supreme Court of the United States. (Printed Record, pages 121 and 123.)

SPECIFICATION OF ERRORS.

I. "That the court below held that the act of the General Assembly of North Carolina entitled 'An act to amend chapter one, volume two, of The Code, relating to agriculture and geology,' ratified on the 21st day of January, 1891, imposing a tonnage tax of twenty-five cents on each and every ton of fertilizer or fertilizing material made or brought into the state, to be paid before delivery to agents, dealers and consumers in the

state, or before a sale or offer to sell the same, and subjecting any person violating the provisions of said act to criminal prosecutions and penalties, is not unconstitutional, null, and void, in that it is repugnant to so much of section eight of article one of the constitution of the United States as provides that "the congress shall have power * * * to regulate commerce with foreign nations, and among the several states and with the indian tribes."

II. "That it held that charge or tax is not repugnant to so much of sub-section two of section ten of article one of said constitution as provides that 'no state shall, without the consent of congress, lay any imposts or duties on imports and exports, except what may be absolutely neccssary to execute its inspection laws,' and therefore is null and void."

III. "That it held that said charge or tax is an inspection law within the contemplation of said clause of said constitution, and therefore constitutional and valid."

IV. "That it held that the said charge or tax is applicable by law exclusively to purposes of inspection of fertilizers and fertilizing materials, whereas it should have held that the same, upon the face of the various statutes relating to the subject, is applicable to purposes foreign to inspection, to-wit, to pay the salary of the analyst (Code, section 2196); the expenses of the Geological Museum and publication of the 'Geology of North Carolina' (Code, section 2198); the expenses of preparing hand books, with illustrated maps, in regard to mines, minerals, forests, climates, and water powers, fisheries, mountains, swamps, industries, and other statistics, to give information to immigrants, and to make expositions thereof and to offer premiums (Code, section 2199); the expenses of immigration agents (section 2200); the expenses of establishing and keeping a general land and mining registry (section 2201); expenses of the North Carolina Industrial Association, five hundred dollars per year (2206); expenses of the North Carolina Industrial School (Agricultural and Mechanical College), five thousand dollars per year (Acts 1885, ch. 308, section 4; Acts 1887, ch. 2110, sec. 1); the expenses of publication of geological reports. (Acts 1887, ch. 409, sec. 15.)"

V. "It is held that the said tax is absolutely necessary to execute the inspection of fertilizers, whereas it should have held that the tax is much in excess of what is absolutely necessary therefor."

VI. "That the court refused to consider the evidence introduced to show that the amount of money raised by said tax was much in excess of what was absolutely necessary for that purpose."

VII. "That the evidence showed that the tonnage tax collected from January 21st, 1891, to January 1st, 1892, was $33,-264.08, and the absolute necessary expenses of executing the

inspection did not exceed $10,000, and the court held that this excess was not material to show that the charge was not an inspection law under the constitution."

VIII. "That the evidence showed that the tonnage tax collected from January 1st, 1892, to January 1st, 1893, amounted to $27,690.16, and the necessary cost of inspection did not exceed $10,000, and the court held that this excess was not material to show that it was not an inspection law."

IX. "That the evidence showed that the tonnage tax collected for the months of January, February, March, April, and a part of May. 1893, was $22,567.25, and the cost of inspection did not exceed $5,000, and the court held that this excess was not material to show that it was not an inspection law."

X. "That the court did not hold that the tax was colorably an inspection charge only."

XI. "That the court did not hold that the said charge was excessive, and as such shows a purpose to evade the intentions of the constitution."

XII. "That the court held that said charge is a police regulation and the legislature of North Carolina had the power to exact it."

XIII. "That the court held that, notwithstanding the evidence and the admissions in the answer of the defendants show that much the larger portion of said tax was not necessary for purposes of inspection and was appropriated and applied to purposes foreign thereto, that the said act is an inspection law, and said tax is absolutely necessary for executing said law."

XIV. "That the court dismissed the bill of the complainants."

ARGUMENT.

I.

THE CIRCUIT COURT HAS JURISDICTION AGAINST THE DEFENDANTS AS OFFICERS OF THE STATE.

The state is not a party on the record.

Osborn *v.* Bank of United States, 9th Wheat., 738.
United States *v.* Lee, 106 U. S, 196.
Poindexter *v.* Greenhow, 114 U. S., 270.
Allen *v.* B. & O. R. R., 114 U. S., 311.
Hagood *v.* Southern, 117 U. S., 69.

II.

THE FIRST SPECIFICATION OR ERROR IS:

"That the court below held that the act of the General Assembly of North Carolina entitled 'An act to amend chapter one, volume two, of the Code, relating to agriculture and geology,' ratified on the 21st day of January, 1891, imposing a tonnage tax of twenty-five cents on each and every ton of fertilizer or fertilizing material made or brought into the state, to be paid before delivery to agents, dealers and consumers in the state or

before a sale or offer to sell the same, and subjecting any person violating the provisions of said act to criminal prosecutions and penalties is not unconstitutional, null and void, in that it is repugnant to so much of section eight of article one of the constitution of the United States as provides that 'the congress shall have power, * * * to regulate commerce with foreign nations and among the several states and with the indian tribes."

In order to discuss satisfactorily the question presented by this exception, it becomes necessary to give a succinct history of the legislation which the bill of complainant assails:

On the first day of November, 1883, The Code of North Carolina went into operation and become "conclusive evidence of the law." (Section 3877).

Chapter one of volume the second is entitled "Agriculture and Geology," and embraces sections 2184 to 2226 (both inclusive) of the Code: It provides for the establishment and operation of "a department of agriculture, immigration and statistics" to be composed of the governor of the state and other persons therein specified. (Section 2184).

Section 2186 confers upon the Board the power to appoint a Commissioner of Agriculture.

The duties of the Board are specified in section 2189 (which is composed of nine sub-divisions). Among other matters they are "especially charged (sub-division 9)," with the enforcement and supervision of the laws and regulations, which are or may be enacted in this state for the sale of commercial fertilizers and seeds.

By section 2190, a license tax of five hundred dollars was required to be paid annually for each separate brand or quality before any fertilizer could be sold or offered for sale in the State of North Carolina, and non-compliance with this requirement subjected the delinquent to summary and penal provisions prescribed for its enforcement.

This tax was declared to be unconstitutional by the circuit court of the United States for the eastern district of North Carolina in the case of *The American Fertilizer Company* v. *The Board of Agriculture*, 43 Fed. Rep., 609.

In the year, 1891, the amendments were made, which are set out in the pleadings.

The imposition of the tax and the forfeitures and penalties prescribed for violation of the provisions of the law so far as they affect merchandise imported into the state are a burden upon the freedom of commerce, a regulation thereof, and null and void.

The act does not, on its face, discriminate against the products of other states.

The appellant is a Maryland corporation, doing business in

Baltimore. It is extensively engaged in the manufacture of fertilizers, and has a large amount of capital invested in the business, and has for a number of years been shipping its fertilizers to North Carolina for sale. It does a large business in that state.

Before this suit was commenced the defendant Board of Agriculture threatened to seize the appellant's fertilizers shipped into the state unless they were tagged, as prescribed in the act imposing the tax and "institute criminal prosecutions against each of its agents who would sell or offer for sale, and to all other persons to whom it should sell for resale, upon each and every sale or offer for sale made, or to be made, or attempted to be made by such agents or other persons."

In the case of *Robbins* v. *The Taxing District of Shelley County*, 120 U. S., 489, an act of the legislature of the state of Tennessee was considered by the court, to-wit: "All drummers and all persons not having a regular licensed house of business in the taxing district, offering for sale or selling goods, wares or merchandise therein, by sample, shall be required to pay to the county trustee the sum of ten dollars ($10) per week, or twenty-five dollars per month, for such privilege; and no license should be issued for a longer period than three months."

Robbins was a citizen of Cincinnati, Ohio, and was soliciting trade in Tennessee, by the use of samples, for a Cincinnati firm, all of the members of which resided and did business in that city. Robbins was arrested for violating the provisions of the act. This court declared the act to be unconstitutional, because it attempted to regulate commerce between the states.

There were no words in the act discriminating against foreign drummers in terms. Yet, the court says: "It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers, those of Tennessee and those of other states. That all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the state."

See, also, case of the State Freight Tax, 15 Wallace, 232; Brown *v.* Maryland, 12 Wheat, 419.

In the case of *Gibbons* v. *Ogden*, 9 Wheat, 1, Chief Justice Marshall, delivering the opinion of the court, says, at page 4:

"The words are: Congress shall have power to regulate commerce with foreign nations, and among the several states and with the indian tribes."

"The subject to be regulated is commerce, and our constitution being, as was aptly said at the bar, one of enumeration and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. Commerce un-

doubtedly is traffic, but it is something more. It is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain, intelligible cause which alters it. "These words" do not comprehend that commerce which is completely internal; it may very properly be restricted to that commerce which concerns more states than one. The enumeration presupposes something not enumerated, and that something, if we regard the language, is the subject of the sentence, must be exclusively internal commerce of a state.

The constitutionality of an act is not determined so much by its intent as by its effect. Whether or not the act is a regulation of commerce depends upon what the burden is put. The State Freight Tax case, *supra*, at p. 272.

It has repeatedly been held that the constitutionality or unconstitutionality of a state tax is to be determined, not by the form or agency through which it is to be collected, but by the subject upon which the burden is laid. This was decided in the case of *Bank of Commerce* v. *New York City*, 2 Black, 620; in the *Bank Tax Case*, 2 Wall., 200; *Society for Saving* v. *Coite*, 6 Wall., 594; and *Provident Institution* v. *Massachusetts*, 6 Wall., 611.

In these cases the banks were required to pay the tax, but the decisions turned upon the question, "What was the subject of the tax, and upon what did the burden really rest; not upon the question from whom the state exacted payment into its treasury."

By the language of the act which we are considering, the tax is a charge on all fertilizers in this state, no matter whence they come. The words, "There shall be a charge of 25 cents per ton on such fertilizers," etc., which must be paid "before delivery to agents, dealers or consumers in this state," apply to all fertilizers, whether manufactured in the state or brought into it from other states.

In the State Freight Tax case, the question was in regard to a tax on each two thousand pounds of freight carried by railroad and other companies doing business in Pennsylvania. This act applied alike to all companies whose lines of transportion extended beyond the limits of the state as well as to those whose lines were wholly within its limits. The court held, that this tax was not imposed on the franchises, the business or the property of the companies, but upon the freight. The opinion further states: "The payment of that tax is a condition upon which is made dependent the prosecution of this branch of commerce. And as there is no limit to the rate of taxation she may impose, if she can tax at all, it is obvious

the condition may be made so onerous that an interchange of commodities with other states would be rendered impossible. The same power that may impose a tax of two cents per ton upon coal carried out of the state, may impose one of five dollars. Such an imposition, whether large or small, is a restraint of the privilege or right to have the subjects of commerce pass freely from one state to another without being obstructed by the intervention of state lines." (Page 276.)

"The state may tax its internal commerce, but if an act to tax interstate or foreign commerce is unconstitutional it is not cured by including in its provisions subjects within the domain of the state." (Page 277.)

The power to tax is the power to destroy. The power to tax, and not the amount of the tax, is the question to be considered. The danger lies in the uncontrolled exercise of this power by the state.

McCulloch *v.* Maryland, 4 Wheat., 429.

The above principles apply in full force to the North Carolina acts. The tax of five hundred dollars imposed by the original act was clearly a tax on the privilege of selling fertilizers within the state. It was held unconstitutional because it imposed a burden on the property imported into the state.

The manufacturer or importer was required before selling or offering for sale any guano or other fertilzier to "obtain a license therefor from the treasurer of the state, for which should be paid a privilege tax of five hundred dollars per annum, for each separate brand or quality." This tax was a condition precedent to selling the article or offering it for sale and acted as a restraint upon freedom of traffic between the states. Upon failure to comply with the requirements of the law the manufacturer or importer becomes liable to indictment, and the fertilizer liable to be seized and condemned as spurious fertilizers." 2 N. C. Code, sec. 2190.

The circuit court of the United States held this tax to be unconstitutional, (*American Fertilizer Co.* v. *Board of Agriculture of N. C.*, 43 Fed. Rep., 609), and Judge Seymour, delivering the opinion of the court, says in regard to it:

"Although the statute in question does not in words impose a tax on fertilizers imported into the State, but one on the privileges of selling or offering them for sale only, it is not now admissible to argue that the latter is not equivalent to the former. That question was settled in *Brown* v. *Maryland*, 12 Wheat., 419.

In that case the court held the tax to be unconstitutional and among the reasons assigned for the decision were the following:

"All must perceive that a tax on the sale of an article, imported only for sale, is a tax on the article itself. It is true a state may tax occupations generally, but this tax must be paid

by those who employ the individual or is a tax on his business. The lawyer, the physician or the mechanic must either charge more on the article in which he deals, or the thing itself is taxed through his person.

This the state has the right to do, because no constitutional prohibition extends to it. So a tax on the occupation of an importer is in like manner a tax on importation.

It must add to the price of the article, and be paid by the consumer, or by the importer himself, in like manner as a direct duty on the article itself would be made. This the state has not a right to do, because it is prohibited by the constitution."

The Act of 1891 is as complete a restriction upon freedom of intercourse as could well be conceived. It is a barrier to interstate traffic. "Sale is the object of importation, and is an essential ingredient of that intercourse of which importation constitutes a part." *Ibid.*

The tonnage tax is a restriction upon sales, the main object of importation. It is not a tax on occupations generally, but if upon any occupation, it is one upon that of the importer which, we have seen, is prohibited by the constitution.

It is not a tax on property exclusively within the jurisdiction of the state, but applies to such as is within its jurisdiction as well as to such as is not. It is not a tax to be paid by the person selling, but upon the importer or consumer.

The Act provides (Record, page 4) that "there shall be a charge of 25 cents per ton on such (*i. e.* in this state) fertilizers and fertilizing material for each fiscal year, ending November 30th, which shall be paid before delivery to agents, dealers or consumers in this state."

If this is not a tax on sales, or the privilege of selling, and as such, a tax on the article itself, it is hard to conceive of one. It is true there is no provision in terms that a license shall be obtained before selling or offering for sale, but the barrier against a sale is just as distinct. The requirement to obtain a license and pay $500 for it as a condition precedent to selling under the original act, was no greater hindrance to freedom of traffic than the imposition of the tonnage tax and its attendant penal provisions. The requirement of a license under the original act was intended to give the person procuring it evidence to show that he had paid the tax, and thereby had acquired authority to sell. The license was a formal matter. The substantial thing was the payment of the tax. This being done the license followed as a matter of right, while under the Act of 1891 there is in terms no license required to be obtained; it is essential that the tax be paid before selling or offering for sale, and the tax in this case, too, is the substantial act to be performed. It too is a burden on the article taxed and its payment is a condition precedent to selling.

While there is no license to be formally obtained from the

Treasurer, there is a requirement equivalent to it. The same section which provides for the tonnage tax also has the following clause:

"Each bag, barrel or other package of such fertilizers or fertilizing materials shall have attached thereto a tag stating that all charges specified in this section have been paid, and the State Board of Agriculture is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will enable them to enforce this law."

There are further provisions to the effect that a failure to comply with this duty will subject the offender to indictment and his fertilizer to seizure and condemnation as spurious fertilizers.

Now it is not stated by whom these tags are to be issued, but as it is the duty of the Board of Agriculture to "adopt such regulations as will enable them to enforce" the law, it follows that this is a part of their duty also. At any rate, they perform this duty.

Now, is not the requirement in regard to affixing the tags substantially a requirement for the purchase of a license? What is the tag but a license? It is not called one, it is true. But it constitutes the evidence that the tax has been paid, and that the person who has paid it has acquired the right to sell. It is the same in effect as the license under the original act.

The tax is the burden in this as in that case, and equally a hindrance or obstruction to interstate commerce. A sale without these requirements being complied with would be illegal and the seller a criminal.

Section 2, Chapter 9, Acts of 1891, provides that, "Every bag, barrel or package * * * offered for sale in this state shall have thereon plainly printed a label or stamp, a copy of which shall be filed with the Commissioner of Agriculture, together with a true and faithful sample of fertilizer or fertilizing material which it is proposed to sell, at or before the delivery to agents, dealers and consumers in this state," &c., &c.

This differs from Section 2191 of The Code, for which it is substituted, in this: The latter provides that the stamp or label shall be affixed and a copy filed with the Commissioner at or before the shipment of such fertilizer into this state; the former that it shall be affixed to such as may be offered for sale in the state, no matter whence it may come.

This is a distinction without a difference, as both operate alike on interstate commerce.

The sections above referred to do not contain all of the hindrances to and restrictions upon traffic between the states.

Section 4, Act of 1891, provides that "Any merchant, trader, manufacturer, or agent who shall sell or offer for sale any commercial fertilizer or fertilizing material without having such labels, stamps or tags * * * * attached thereto, or shall

use the required tag the second time to avoid the payment of the tonnage charge, or if any person shall remove any such fertilizer, he shall be liable to a fine of ten dollars for each separate bag, barrel, or package, sold or offered for sale or removed. * * * * * And any person who shall sell, offer for sale or remove any such fertilizers, or any agent of any railroad or other transportation company who shall deliver any such fertilizers, in violation of this section, shall be guilty of a misdemeanor."

Section 6 provides that: "It shall be lawful for the Department of Agriculture to require the officers, agents, or manufacturers of any railroad, steamboat or other transportation company transporting fertilizers or fertilizing materials in the state to furnish monthly statements of the quantity of such fertilizers, with the name of the consignor and consignee, and the name of the brand delivered on their respective lines at any and all points within this state; and said department is hereby empowered to compel said officers, agents and managers to submit their books for examination, if found expedient so to do; and any such agents, officers or managers failing or refusing to comply with the requirements of this section, shall be guilty of a misdemeanor."

The object of all the provisions of the statute to which we have referred is to enforce the collection of the tax, and as a means to that end, each one of the several sections contains some requirement to be complied with before the article is to be sold or offered for sale. These prohibitions extends to all who may be interested—the manufacturer, importer, retail dealer, agents and transportation companies—and the last named section of the act cited provides, in some instances, for an inquisitorial examination of the books of the transportation companies.

There is no tax against the persons referred to, nor is there any provision for collecting it out of these persons. The only provision in regard to collecting the tax is to be found in section 2192 of The Code, as amended by section 3 of the act of 1891, which is set out as amended on page 5 of the record.

The tax is upon the fertilizer or the sale thereof, and in order to enforce its collection, proceedings for seizure and condemnation of it are provided for: the requirement that tags shall be purchased and affixed to the packages, that labels shall be filed, and the penalties provided for violation of the act shall be imposed, all contribute to the collection of this tax, and necessarily affect the fertilizer itself. The penalties and criminal liabilities alone affect the persons concerned, and these are subsidiary or incidental to the main object of the statute. The tax affects them indirectly only.

The effect of these enactments is—

(1) As a condition precedent to the delivery of the fertilizer to agents, consumers or dealers, or selling or offering to sell it,

the tax must be paid, and the tags affixed, and the labels stamped or printed and filed.

(2) These prohibitions extend to merchants, traders, manufacturers or agents, who shall sell or offer for sale or remove, and to the agents of any railroad, or other transportation company, who shall deliver any fertilizer without the labels, stamps and tags.

(3) Any person violating the provisions of the act becomes liable to suit for penalties and to criminal prosecution, and the railroad companies are subjected to inquisitorial examination of their books, papers, etc.

So far as these requirements affect fertilizers imported into the state, they are regulations of commerce and unconstitutional, null and void.

It will be observed that the act forbids any merchant, trader, manufacturer or agent selling or offering to sell in the state. This applies to manufacturers of and dealers in such fertilizers as were brought into the state from another state as well as to those manufactured within the state. It thus imposes burdens upon the persons named, and becomes a restriction upon interstate commerce.

If a manufacturer of goods which are the subjects of interstate traffic cannot sell, remove or deliver his wares, they are of no value to him, and the burden is one which the state has no right to impose.

Brown *v.* Maryland, *supra.*

Under the principle established in *McCall* v. *California,* 136 U. S., 104, this tax is laid on the means or occupation of carrying on interstate commerce when applied to those dealers and manufacturers whose business it is to bring fertilizers from other states into North Carolina for sale.

In that case, McCall was soliciting agent for passengers over a railroad extending from New York to Chicago. He had failed to pay a license tax "for every railroad agency, twenty-five dollars per quarter."

The court held that McCall's business was interstate commerce, and that "it must follow that the license tax exacted of him as a condition precedent to his carrying on that business was a tax on interstate commerce, and therefore violative of the commercial clause of the constitution." The court cited the following from *Lyng* v. *Michigan,* 135 U. S., 166: "We have repeatedly held that no state has a right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to congress;" and the following from

Mobile v. *Kimball*, 102 U. S., 691–702: "Commerce with foreign countries and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transit of persons and property, as well as the purchase, sale and exchange of commodities."

In other words, it includes transportation and things or persons transported.

In *Leloup* v. *Mobile*, 127 U. S., 640, the question was whether the legislature of Alabama had a right to impose a license tax on a telegraph company for transacting the business of transmitting messages between the different states. Mr. Justice Bradley, in delivering the opinion of the court, says:

"The question is squarely presented to us, therefore, whether a state, as a condition of doing business within its jurisdiction, may exact a license tax from a telegraph company, a large part of whose business is the transmission of messages from one state to another. * * * Can a state prohibit such a company from doing such a business within its jurisdiction unless it will pay a tax or procure a license for the privilege? If it can, it can exclude such company and prohibit the transaction of such business altogether. We are not prepared to say this can be done; ordinarily, occupations are taxed in various ways, and in most cases legitimately taxed. But we fail to see how a state can tax a business occupation when it cannot tax the business itself. Of course, the exaction of a license tax as a condition of doing any particular business is a tax on the occupation of doing a business and is surely a tax on the business."

In the case of *Gloucester Ferry* v. *Pennsylvania*, 114 U. S., 196, the court held that under an act of the legislature of Pennsylvania, imposing a tax on every company or association doing business in that state, the state could not collect a tax out of the company whose whole income was derived from the transportation of freight and passengers from Gloucester, in New Jersey, to Philadelphia and back. The said company was chartered by the legislature of New Jersey. Its entire business and property was in that state, except a wharf in Philadelphia, which it leased for a term of years. The tax was laid on the capital stock of the company.

Mr. Justice Field, delivering the opinion, says: "Transportation implies the taking up of persons or property at some point and putting them down at another. A tax, therefore, upon such receiving and landing of passengers and freight is a tax upon the transportation; that is, upon the commerce between the two states involved in such transportation."

* * * * * * *

"Commerce among the states consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that

purpose, as well as the purchase, sale and exchange of commodities."

In the case of *Henderson* v. *Mayor*, 92 U. S., 260, the question involved was the right of the state of New York to require the master of every vessel coming from a foreign port, ~~either~~ within twenty-four hours after reaching New York, to report in writing to the mayor the names, birth place, last residence, and occupation of every passenger who is not a citizen of the United States, * * * and to require the owner or consignee of the vessel to give bond for every passenger so reported, in a penalty of $300; * * * to indemnify the commissioners of immigration, and every county, city and town in the state against any expense for the relief and support of the person named in the bond, for four years thereafter. The owner or consignee could be relieved of giving such bond "by paying for each passenger, within twenty-four hours after his or her landing, the sum of one dollar and fifty cents, fifty cents whereof is to be paid to the counties in the state, and the residue to the commissioner of immigration for general purposes, and particularly to be used in erecting wharves and buildings, and in paying salaries and clerk hire."

The court says: "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and if it is apparent that the object of this statute, as judged by that criterion, is to compel the owners of vessels to pay a sum of money for every passenger brought by them from a foreign port and landed at the port of New York, it is as much a tax on passengers if collected from them, or a tax on the vessel or owners for the exercise of the right of landing their passengers in that city, as was the statute held void in the *Passenger Cases*.

To require a heavy and almost impossible condition to the exercise of that right, with the alternative of payment of a small sum of money is, in effect to demand payment of that sum.

At page 271, it says: "A law or rule emanating from a lawful authority, which prescribes terms or conditions on which alone the vessel can discharge its passengers is a regulation of commerce.

The application of this rule to our case is very plain, as no fertilizer can be put on the market either by sale, offer for sale, or delivery or removal by persons or corporations until all the requirements as to the tax, tags and labels are fully complied with. In this case the *Passenger Cases*, 7 How., 283, are cited with approval and the case of *New York* v. *Miln* is practically overruled.

The *State Freight Tax case*, 15 Wall., 232, involved the constitutionality of an act of the legislature of the state of Pennsylvania, which provided substantially that the president or

some other officer of all railroad, steamboat, and other companies doing business in the state and over whose works freight may be transported should "make return in writing to the auditor general under oath or affirmation, stating fully and particularly the number of tons of freight carried over, through, or upon the work of said company," whose reports were to be made quarterly, and each of the companies upon such returns being made was to pay to the state treasurer, to the use of the commonwealth, on each two thousand pounds of freight so carried a certain tax.

The Reading Railroad Company was charged by the accounting officers with this tax. This company was chartered by an act of the legislature of Pennsylvania, its sole business was the transportation of passengers and freight, and carrying no commodities of its own. A portion of the coal carried by it is consumed in the state, but the larger portion is exported beyond the limits.

The court held that this action, in so far as the company was concerned, was a regulation of commerce.

Judge Strong, delivering the opinion of the court, says (page 272):

"Upon what is the tax imposed? * * * * Where does the substantial burden rest? Very plainly it was [not] intended to be, nor is it in fact, a tax upon the franchise of the carrying companies or upon their property or upon their business measured by the number of tons of freight carried. On the contrary, it is expressly laid on the freight carried."

A page 275, he says: "Beyond all question the transportation of freight or of the subject of commerce, for the purpose of sale or exchange; is a constituent of commerce itself."

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In his work on the constitution, Judge Story asserts that commerce as used in that instrument includes not only traffic, but intercourse and navigation. And in the *Passenger Cases* (7 How., 416), it was said, "Commerce consists in selling the superfluity; in purchasing articles of necessity; as well productions as manufactures; in buying from one nation and selling to another, or in transporting the merchandise from the seller to the buyer to gain the freight.

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"Then why is not a tax upon freight, transported from state to state, a regulation of interstate transportation, and therefore a regulation of commerce among the states? It is not prescribing a rule for the transporter, by which he is to be controlled in bringing the subjects of commerce into the state, and in taking them out? The present case is the best possible illustration. The legislature has, in effect, declared that every ton of freight taken up in the state and carried out, or taken up in other states and brought within her limits, shall pay a specified

tax. The payment of that tax is a condition upon which is made dependent the prosecution of this branch of commerce. And as there is no limit to the rate of taxation she may impose, if she can tax at all, it is obvious the condition may be made so onerous that an interchange of commodities with other states would be rendered impossible. The same power that may impose a tax of two cents per ton upon coal carried out of thes tate, may impose one of five dollars. Such an imposition, whether large or small, is a restraint upon the privilege or right to have the subjects of commerce pass freely from one state to another without being obstructed by the intervention of state lines. It would hardly be maintained, we think, that had the state established custom houses on her borders, wherever a railroad or canal comes to the state line, and demanded at these houses a duty for allowing merchandise to enter, or to leave, the state upon one of these railroads or canals, such an imposition would not have been a regulation of commerce with her sisters tates. Yet, it is difficult to see any substantial difference between the supposed case and the one we have in hand." * *

"Nor can it make any difference that the legislative purpose was to raise money for the support of the state government and not to regulate transportation. It is not the purpose of the law, but its effect which we are now considering."

It is certain that the tax in the case before the court was not on the business of the plaintiff, because its domicile was in Baltimore, and the *situs* of the fertilizer were there also.

The plaintiff, the Patapsco Guano Company, was a corporation created and organized under the laws of Maryland, and was engaged in the manufacture of fertilizers in the city of Baltimore, and had a large amount of capital invested in its business at that place. It had been selling fertilizers in North Carolina for many years, and had built up a profitable business therein. (Page 3 of Record, secs. 1, 2 and 3.) It had shipped a quantity of its fertilizer into North Carolina for sale, and was shipping more, and desired to continue to do so in order to meet the requirements of its trade and the increasing demand of the public for it. The defendant had threatened to "make seizures of all fertilizers which the plaintiff company had shipped, or should ship, into said state, unless the same should be tagged in accordance with the act of assembly, etc.," * * and that they would institute criminal prosecutions for an alleged misdemeanor against each of the plaintiff's agents, who might sell, or offer for sale, and against all other persons to whom the plaintiff might sell for resale, upon each and every sale or offer for sale made, or to be made or attempted to be made, by such agents or other persons. (Record, secs. 5 and 6, page 4.)

It further appears that one of the plaintiff's agents in Ral-

eigh, through fear of involving himself in difficulty and criminal prosecution, had declined to continue to act as such agent and to make sales of the plaintiff's goods, unless they should be tagged in pursuance of the act, and that within a few days before the suit was commenced, the plaintiff had caused to be shipped to a party in Raleigh a ton of its guano, but the railroad company, on receiving the same in Raleigh, had refused to deliver it to the consignee because it was not tagged, and the company had been forbidden by the defendant Board of Agriculture, to deliver any fertilizers which had not been tagged. (Record, pages 8 and 9, secs. 15*a* and 15*b*.)

The plaintiff has complied with all of the requirements of the law, except the payment of the tax. (Record, p. 9, sec. 19.)

It is extremely difficult, in fact impossible, to distinguish in principle the operation of this law from the imposition of a duty to be collected by a custom-house official stationed on the border of the state. It is very true the guano was the property of the plaintiff, but it was in transit from Baltimore to Raleigh and had never acquired a *situs* in North Carolina. It was, then, not the subject of taxation by the state laws as property of the plaintiff. The law imposes various conditions to be performed by the plaintiff before the fertilizer could be delivered, removed, sold or offered for sale. It was not in a condition to be sold, on account of the obstructive requirements. In fact, the imposition of a tariff duty has precisely the same effect; and the fact that in one case the tax is paid to a custom-house officer, and in the other into the state treasury, is not a sufficient dissimilarity to alter the application of the principle. Both act as conditions precedent and obstructions to a sale until the tariff in one case and the tax in the other is paid.

The *State Freight Tax Case* has also the following: "Nor can it make any difference that the legislative purpose was to raise money for the support of the state government and not to regulate transportation. It is not the purpose of the law, but its effect, which we are now considering."

It may be well to observe at this place that the act of North Carolina professed to levy the tonnage tax for the purposes of inspection, but its effect was a regulation of commerce. The subject of inspection, however, is discussed more fully in subsequent pages of this Brief.

See, also Passenger Cases, 7 How., 458.
Ashley *v.* California, 24 How., 169.
Crandall *v.* Nevada, 6 Wall., 35.
Woodruff *v.* Parham, 8 Wall., 138.

The principles decided in the case of *Pickard* v. *Pullman Car Co.*, 117 U. S., 34, apply with great force to the case before the court. In this case, it appears that, by the constitution of the

state of Tennessee, all property is taxed *ad valorem*, but with a proviso that the legislature shall have power to tax merchants, peddlers and privileges in such manner as they may from time to time direct. By an act passed in 1877 it was provided: "that the running and using of sleeping cars or coaches on railroads in Tennessee, not owned by the railroads on which they are run or used, is declared to be a privilege;" * * * and the companies were required to pay to the comptroller by the first day of July in each year, for each car so run or used, the sum of fifty dollars; and in default of its payment, the comptroller could enforce the collection of the tax by distress warrant.

Under these acts a large tax was assessed on the cars of the defendant company ($50 on each for several years).

The facts show that the company was domiciled in Kentucky, and had no property in Tennessee, except its Pullman cars, and that these cars were leased to a railroad in Tennessee, and were used by it "in transporting passengers from other states into and across Tennessee, and from points in Tennessee to points in other states," as well as to and from points within the state. The court held the tax unconstitutional, and in its opinion states:

"The tax was not a property tax, because, under the constitution of Tennessee, all property must be taxed according to its value, and this tax was not measured by its value, but was an arbitrary charge. What was done by the plaintiff was taxed as a privilege, it being assumed by the state authorities that the legislature had the power under the constitution of Tennessee to enact the sixth section of the act of 1877, and that the plaintiff had done what that section declared to be a privilege.

"By the decisions of the supreme court of Tennessee, cited in the circuit court on the demurrer, it is held that the legislature may declare the right to carry on any business or occupation to be a privilege, to be purchased from the state on such conditions as the statute law may prescribe, and that it is illegal to carry on such business without complying with those conditions. In this case the payment of the tax imposed was a condition prescribed, without complying with which, what was done by the plaintiff was illegal.

"The tax was imposed as a condition precedent to the right of the plaintiff to run and use the 36 sleeping cars owned by it, as it ran and used them on railroads in Tennessee. The privilege tax is held by the supreme court of Tennessee to be a license tax, for the privilege of doing the thing for which the tax is imposed, it being unlawful to do the thing without paying the tax. What was done by the plaintiff in this case, in connection with the use of the 36 cars, if wholly a branch of interstate commerce, was made by the state of Tennessee un-

lawful unless the tax should be paid, and to the extent of the tax, a burden was placed on such commerce; and upon principle the tax, if lawful, might equally well have been large enough to practically stop altogether the particular species of commerce."

The constitution of North Carolina (Art. 5, Sec. 3), provides:

"Laws shall be passed, taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise; and also all real and personal property, according to its true value in money. The general assembly may also tax trades, professions, franchises and incomes, provided that no income shall be taxed when the property from which it is derived is taxed."

Sec. 7. Every act of the general assembly levying a tax, shall state the special object to which it is to be applied, and it shall be applied to no other purpose."

Sec. 7, Schedule B, of chapter 323 of the acts of 1891, of North Carolina, (The Revenue Act) is in these words:

"The taxes in this schedule shall be imposed as license tax for the privilege of carrying on the business or doing the act named, and nothing in this schedule contained shall be construed to relieve any person from the payment of the *ad valorem* tax on his property, as required in the preceding schedule. The license issued under this act shall be for twelve months, unless otherwise specially provided in any section imposing a tax."

SEC. 21. On every commission merchant, broker or dealer buying or selling for another, one per centum on his commissions.

SEC. 22. Every merchant, jeweller, grocer, druggist or other dealer who shall buy and sell goods, wares and merchandise of whatever name or description, not specially taxed elsewhere in this act, shall, in addition to his *ad valorem* tax on his stock, pay as a license one-tenth of one per centum on the purchases in or out of the state," &c.

The fertilizer tax does not come under the *ad valorem* rule prescribed by the constitution. It is an "arbitrary tax." It was never intended to be a tax on business carried on in the state, because there is a special tax on the occupation of merchants and other traders in addition to the *ad valorem* property tax.

Every species of property whose *situs* is in the state is, by the constitution, to be taxed *ad valorem*. This excludes the idea of a property tax under the constitution, because the fertilizer charge is a specific tax.

All traders are required to pay a license tax, or a percentage on their purchases. This excludes the idea that it was intended as a tax on the business of any one whose domicile and whose business is within the jurisdiction of the state.

This tax is in the nature of a duty on such fertilizer as is brought into the state, or a charge for the privilege of selling such fertilizer. In either case it is a burden upon inter-state commerce, if it was intended by the framers of the act that it should apply to fertilizer brought into North Carolina from another state and which had not become mingled with the mass of property in the state.

The following cases sustain the position that the tax in question is a regulation of commerce:

Robbins *v.* Taxing District, 120 U. S., 489.
Juehler ~~Puehler~~ *v.* Taxing District, 145 U. S., 410.

from which it is distinguished:

Welton *v* Missouri, 91 U. S., 275.
Railroad Co. *v.* Husen, 95 U. S., 465.
Cook *v.* Pennsylvania, 97 U. S., 566.
Guy *v.* Baltimore, 100 U. S., 434.
County of Mobile *v.* Kimball, 102 U. S., 691.
Webber *v.* Virginia, 103 U. S., 344.
Moran *v.* New Orleans, 112 U. S., 69.
Walling *v.* Michigan, 116 U. S., 446.
Wabash R. R. Co. *v.* Illinois, 118 U. S., 557.
Fargo *v.* Michigan, 121 U. S., 230.
Corson *v.* Maryland, 120 U. S., 502.
Phil. & Southern Mail S. S. Co. *v.* Pennsylvania, 122 U. S., 326.
Asher *v.* Texas, 128 U. S., 129.
Stoutenburgh *v.* Henneet, 129 U. S., 141.
Lyng *v.* Michigan, 135 U. S., 161.
McCall *v.* California, 136 U. S., 104.
N. & W. R. R., *v.* Pennsylvania, 136 U. S., 114.
Crutcher *v.* Kentucky, 141 U. S., 47.
Brennan *v.* Titusville, 153 U. S., 289.

The plaintiff is a Maryland corporation and has its domicile at Baltimore. The guano had been shipped by the plaintiff from Baltimore, through Virginia, to North Carolina, and it was about to ship more in order to meet the requirements of its trade. The *situs* of this fertilizer was in Maryland; before it could acquire a *situs* in North Carolina certain requirements of the statute were to be complied with. The tax was to be paid and tags, stating it was paid, were to be attached to each bag, barrel or package. (Sec. 2190; record, page 4.)

Besides, every bag, barrel or package offered for sale in the state was to have the label or stamp printed on it, of which a copy was to be filed with the Commissioner, together with a sample of the fertilizer at or before delivery to agents, dealers or consumers in the state.

It was necessary to comply with all of these requirements before the fertilizer could be "delivered to agents, dealers and

consumers in the state," * * * and any person who should sell or offer for sale any such fertilizer, without compliance therewith, became liable to indictment, and the fertilizer to seizure and condemnation, (sec. 2190), and all persons were forbidden to sell, or offer for sale or remove, and agents of railroad and other transportation companies were forbidden to deliver the fertilizer until the labels, stamps and tags were attached, under heavy penalties. (Sec. 2193.) So, until all of these matters were complied with, the *situs* of the fertilizer could not be changed. It could not become domestic commerce until it was done, and, as a corollary, could not become within the political jurisdiction of the state.

In *McCulloch* v. *Maryland*, 4 Wheat., 316–427, Chief Justice Marshall, delivering the opinion of the court, says: "All subjects over which the sovereign power of the state extends are objects of taxation, but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced as self-evident." Cited in *Gloucester Ferry* v. *Pennsylvania*, 114 U. S., 206, 207.

The effect of the tax is to intercept an article imported into the state from another state, and on its way to be incorporated with the mass of property in the state. It is the property of the shipper or importer until it is paid. Its identity is not lost, its bulk is not broken; it has never reached the retailer. It is an interference with a restriction upon traffic among the States. It is a matter of indifference whether it be called a charge or a tax. It is a device to raise money, and as such is a burden upon commerce. It is laid on the fertilizer, and is to be paid while it remains in the original package, and is to be collected before the article loses its identity and becomes incorporated with the general mass of property in the state. Until the tax is paid and the tags are affixed, it is not within the jurisdiction of the state, but, in contemplation of law, is in transit from Maryland to North Carolina.

If any other construction be put upon the act, the fertilizer would have been subject to taxation in Virginia while passing through that state as well as North Carolina.

The case of *Coe* v. *Errol*, 116 U. S., 517, distinguishes domestic commerce from commerce in transit from one state to another or interstate commerce. The plaintiff in that case and his associates, were the owners of a number of spruce logs, which had been cut in New Hampshire and placed in a stream, near Errol in that state, to be from there floated down the Androscoggin river to Maine to be manufactured and sold; another lot of logs out in Maine were on their way to Lewiston, Maine, to be manufactured, but were detained in Errol by low water. Both classes of logs were assessed for taxation by the selectmen of Errol. The supreme court of New Hampshire held that the logs cut in Maine were not liable to taxation under the laws of

the former state, and that point was not raised in the supreme court of the United States. The question as to the others was, "Are the products of a state, though intended for transportation to another state, and partially prepared for that purpose by being deposited at a place or port of shipment within the state, liable to be taxed like other property within the state?' (Page 524.)

"This question does not present the predicament of goods in course of transportation through a state, though detained for a time within the state by low water, or other cause of delay. * * Such goods are already in the course of commercial transportation, and are clearly under the protection of the constitution. And so, we think, would the goods in question be, when actually started in the course of transportation to another state, or delivered to a carrier for such transportation. There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the state of their origin to that of their destination—when the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entreport for that particular region, whether on a river or a line of railroads; such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state. Until then it is reasonable to regard them as not only within the state of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without any discrimination in the usual way and manner in which such property is taxed in the state. (Page 525.)

The court further said: "But no definite rule has been adopted with regard to the point of time at which the taxing power of the state ceases as to goods exported to a foreign country or to another state. What we have already said, however, in relation to the products of a state intended for exportation to another state, will indicate the view which seems to us the sound one on that subject, namely, that such goods do not cease to be part of the general mass of property in the state, subject as such to its jurisdiction and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another state, or have been started upon such transportation in a continuous route or journey." (Page 527.)

"Whenever a commodity has begun to move as an article of

trade from one state to another, commerce in that commodity between the states has commenced."

The Daniel Bull, 10 Wall., 557–565.

And it may be added, it does not terminate till it is delivered by the carrier to the consignee at the point of destination.

The fertilizer manufactured by the plaintiff in Baltimore was, when manufactured and up to the time when it was delivered to the carrier at Baltimore to be shipped to North Carolina, domestic commerce within the jurisdiction of the state of Maryland and subject to be taxed as other property in that state. As soon, however, as the plaintiffs had delivered it to the carrier for shipment, its character changed and it became inter-state commerce. It was in this condition when it passed through Virginia and entered the state of North Carolina. It was so while under the control of the carrier, and could not have been divested of that character without an actual delivery of it to the consignee for sale, then it would have become domestic commerce of North Carolina, and then and not till then could it have become mingled with the mass of property of the state, and so within its jurisdiction and liable to be taxed as other property in the state.

It was in transit and not a commodity for sale in the state when seizure was threatened. It was not, under the act, in a condition to be sold, or offered for sale, or moved by the transportation companies, or delivered or to be delivered to agents, dealers or consumers, because the tax was not paid and the article was not labelled and tagged. So, then, the tax is an obstacle to freedom of trade among the states, which might easily become a prohibition. The legislature could increase it from twenty-five cents to five dollars per ton, if it has the constitutional right to impose it at all, and this would exclude such fertilizer as is manufactured in other states from the market in North Carolina.

It can by no means be maintained that as soon as merchandise crosses the state line, it becomes subject to the internal regulations of the state as domestic commerce, for this would lead to the absurdity that articles in transit from one state to another would have one character in one state and a different one in another, nor can it be claimed that its character is changed when it reaches its destination and before delivery to the consignee and mixed with the mass of property in the state.

It is in transit until the carrier parts with control over it and its character as interstate commerce is not changed till it becomes an article ready for sale or for use in the state into which it is brought.

The prohibition in the statute against the removal of the fertilizer is a barrier to its entrance into the state, and prevents it from being mixed with the mass of property. This provision

takes effect on the transportation companies the very moment, when the merchandise reaches the state line and before it comes within the jurisdiction of the state. It then is impossible without violating this provision of the law to introduce the article into the state. A custom-house officer could do no more.

The payment of the tax gives the right to introduce it into the state and to sell it after it is introduced. Till this is done, there is no right to do either.

Brown *v.* Maryland, 12 Wheat., 436.

It is a fact in our case that the tax affected the fertilizer of the plaintiff, while it was in the original package and before it become mingled with the mass of property in the state.

The leading case on this subject is *Brown* v. *Maryland, supra.* In that case the question was, whether a license tax could be imposed by a state legislature on an importer of certain foreign articles by bale or package and other persons selling the same by wholesale, bale or package, etc.

Chief Justice Marshall, delivering the opinion, says: "The indictment is against the importer for selling a package of dry goods in the form in which it was imported without a license. This state of things is changed if he sells them or otherwise mixes them with the general property in the state, by breaking up his package and travelling with them as an itinerant peddler. In the first case the tax intercepts the import, as an import on its way to be incorporated with the general mass of property, and denies it the privilege of becoming so incorporated until it shall have contributed to the revenue of the state. It denies to the importer the right of using the privilege, which he has purchased from the United States until he shall have also purchased it from the state." Page 443.

It may be said when the principles so laid down by the Chief Justice are applied to interstate commerce that they deny to the importer the privileges of free commercial intercourse conferred on him by the constitution of the United States until he shall have purchased it from the state. The same rule applies to interstate commerce.

The original package case, *Leisey* v. *Hardin* (135 U. S., 100), decides that a law of the state of Iowa, which prohibits the sale of intoxicating liquors within the state, is void, in so far as it prohibits the sale of liquors by a foreign or non-resident importer on the packages in which they are brought from another state, being in conflict with the provision of the constitution vesting in congress the power to regulate commerce between the states.

Chief Justice Fuller, in delivering the opinion of the court, says: "The power vested in congress to regulate commerce with foreign nations and among the several states, and with

the indian tribes, is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the constitution. It is co-extensive with the subject on which it acts, and cannot be stopped at the external boundary of a state, but must enter its interior, and must be capable of authorizing the disposition of these articles which it introduces, so that they may become mingled with the common mass of property within the territory intended."

"Gibbons *v.* Ogden, 9 Wheat., 1.
"Brown *v.* Maryland, 12 Wheat., 41, 419."

"And while by virtue of its jurisdiction over persons and property within its limits, a state may provide for the security of the lives, limbs, health and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to congress by the constitution is not within the jurisdiction of the police power of the state, unless placed there by congressional action."

The court held that ardent spirits, distilled liquors, ale and beer, are subjects of exchange, barter and traffic, like any other commodity, and are so recognized by the commercial world, the laws of congress and the decisions of the courts, and that the plaintiffs had the right to import this beer into Iowa, and the right to sell it, "by which act alone it would become mingled with the mass of property in the state."

The fertilizer in the case before the court was interstate commerce when it began its journey from Baltimore. It will hardly be claimed that it lost its character as such while passing across Virginia, or that it lost it when it crossed the northern border of North Carolina. If it be true, as laid down in the case last cited, that until the original packages are sold, the article imported does not become mingled with the mass of property in the state, then it was clearly impossible for the fertilizers ever to become such, unless the conditions imposed by the act were complied with. The Iowa statute did not prescribe that the beer should not be sold, or offered for sale, before certain conditions were complied with, but simply declared the manufacture and sale of liquors unlawful.

There was also a provision in the Iowa act which forbade any common carrier to bring within the state of Iowa for any person or persons, or corporation, any intoxicating liquors from any other state or territory, without a certificate from the auditor of the county to which the liquor was to be transported that the person to whom it was to be delivered was authorized to sell intoxicating liquors in such county. This provision was held unconstitutional in *Bowman* v. *Railway*, 125 U. S., 465. See also, *Cooley* v. *Board of Wardens*, 12 How., 299.

Welton *v.* State, 91 U. S., 275.
Walling *v.* Michigan, 116 U. S., 446.
Railroad *v.* Husen, 95 U. S., 465.
Cook *v.* Pennsylvania, 97 U. S., 566.

In this case a state law which required auctioneers to collect and pay into the state treasury a tax on their sales, when applied to imported goods in the original package by them sold for the importer, was held void. So, also, a statute intending to regulate, or to impose any other restrictions upon the transmission of persons or property or telegraphic messages from one state to another. *Railway Co.* v. *Illinois*, 118 U. S., 557; and Drummer's Case, *Robbins* v. *Taxing District*, 120 U. S., 489.

In *Mobile* v. *Kimball*, 102 U. S., 691, it is said: "The subjects indeed upon which congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the states; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the states which consists in the transportation, purchase, sale and exchange of commodities. Here, there can, of necessity, be only one system or plan of regulation, and that congress alone can prescribe."

In *Brown* v. *Houston*, 114, U. S., 622, the coal was assessed for taxation under the general law of the state, it being held in New Orleans for sale. The court upheld the law and stated: "It (the tax) was imposed after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year or two years, or only for a day. It had become a part of the general mass of property in the state, and as such it was taxed for the current year (1880) as all other property in the city of New Orleans was taxed."

This decision was put upon the ground that the coal had acquired a *situs* in Louisiana, was mingled with the general mass of property and was within the jurisdiction of the state for taxation under the general law. There was no tax imposed the payment of which was necessary to confer a license to sell. It was, when assessed, already "for sale."

The court says in *Leloup* v. *Mobile*, 127 U. S., 640: "We may here repeat what we have so often said before, that this exemption of interstate and foreign commerce from state regulation does not prevent the state from taxing the property of those engaged in such commerce located within the state as the property of other citizens is taxed, nor from regulating matters of

local concern which may incidentally affect commerce, such as wharfage, pilotage and the like."

It will not sustain a tax if it is specialized as to operate as a discriminative burden against the introduction and sale of the products of another state or against the citizens of another state.

Walling *v.* Michigan, 116 U. S., 461.

In no sense can it be claimed that the tonnage tax is the same as the tax upon the people generally. It is not an ad valorem tax as the constitution requires. For section 9, act of 1891, chapter 9, reads: "Whenever any manufacturer of fertilizer or fertilizing material shall have paid the charges hereinbefore provided, his goods shall not be liable to any further tax whether by city, county or town."

This section does not exempt it from a further tax by the state, if the state should see fit to impose one, but from taxation by counties, cities and towns. By the laws of North Carolina counties, cities and towns have extensive powers of taxation. So far as the former is concerned it is provided in section 5, article C, of the state constitution, that "The taxes levied by the commissioners of several counties for county purposes, shall be levied in like manner with the state taxes, and shall never exceed the double of the state tax, except for a special purpose, and with the approval of the general assembly."

It will thus be seen that the fertilizer tax is specialized to a degree that makes it void, when assessed against property brought into the state from another state for sale as in the case before the court.

This tonnage tax is purely a revenue measure, as much so, as any of the duties laid down in the *McKinley* and *Wilson* tariff laws.

So far as the effect of the act is to be considered, whatever may be the motive for a tax whether revenue restriction, retaliation or protection to domestic manufactures, it is equally a regulation of commerce, and in effect an exercise of the power of laying duties on imports.

Walling *v.* Michigan, 116 U. S., 458, quoting from *State* v. *North*, 27 Missouri, 464.

The case of *Plumley* v. *Massachusetts*, 155 U. S., 461, brought up for consideration a law of the state of Massachusetts entitled "An act to prevent deception in the manufacture and sale of importation butter."

By this statute any person who shall sell, offer to sell, expose for sale, or have in his possession with intent to sell, any compound or article in imitation of pure yellow butter, shall be subject to fines and penalties therein prescribed. The plaintiff was arrested for violation of the act and convicted of a misdemeanor.

His offense consisted in selling one package of oleomargarine, designed to take the place of pure butter, manufactured from cream. It was manufactured by a firm in Chicago and sold by him, as their agent in Massachusetts. The court sustained the act. Judge Harlan delivering the opinion, says: "It will be observed that the statute of Massachusetts which is alleged to be repugnant to the commerce clause of the constitution does not prohibit the manufacture or sale of all oleomargarine, but only such as is colored in imitation of yellow butter produced from pure unadulterated milk or cream of such milk. * * * * * * * Now the real object of coloring oleomargarine so as to make it look like genuine butter is that it may appear what it is not."

* * * * * * * He is only forbidden to practice in such matter a fraud upon the general public."

He cites and distinguishes *Leisy* v. *Hardin*, 135 U. S., 100. He says, "It is sufficient to say of *Leisy* v. *Hardin*, that it did not in form and in substance present the particular question now under consideration. The article which the majority of the court held could be sold in Iowa in original packages, the statute of that state to the contrary notwithstanding, was beer manufactured in Illinois and shipped to the former state, to be there sold in such packages. So far as the record is disclosed, and so far as the contention of the parties were concerned, the article there in question was what it appeared to be, namely, genuine beer, and not a liquid or drink colored artificially so as to cause it to look like beer." In our case, the fertilizer was what it appeared to be—genuine fertilizer.

The decision in *Leisy* v. *Hardin* has never been overruled, so far as the principle involved is concerned.

It is true that congress, by the Wilson bill, passed in 1890, by restricting the freedom of commerce between the states, in that particular, places spirituous, vinous and malt liquors imported in unbroken packages into a state, under the police regulations of that state; but the act of congress had no other effect, and did not extend to and embrace in its operation any other article of interstate traffic or merchandise. As to fertilizers and other commodities, that freedom of intercourse remains unchanged.

Wilkinson *v.* Rahrer, 140 U. S., 545.

The Wilson act is a recognition of the principles laid down in *Leisy* v. *Hardin*. It is cited with approval in *Brennon* v. *Titusville*, 153 U. S., 289, which was decided in 1893.

The power to regulate foreign and interstate commerce is vested exclusively in congress; nor is this control over commerce between the states lessened by the failure of congress to pass any law respecting it. The silence of congress on the subject means that it shall be free from interference by the states.

Passenger cases, 7 How., 233.
Gibbon *v.* Ogden, 9 Wheat., 1.
Mobile *v.* Kimball, 102 U. S., 691.
Wallen *v.* Michigan, 116 U. S., 455.
Philad. & Southern S. S. Co. *v.* Penn., 122 U. S., 326.
Bowman *v.* Chicago & N. W. R. R., 125 U. S., 465.

The tonnage tax is a tax on the sale of the article, and therefore a tax on the article itself while in transit.

Brown *v.* Maryland, 12 Wheat., 441.

III.

THE SECOND ASSIGNMENT OF ERROR IS:

II. "That it (the court below) held that said charge or tax is not repugnant to so much of sub-section two of section ten of article one of said constitution, as provides that 'no state shall, without the consent of congress, lay any imposts or duties on imports and exports, except what may be absolutely necessary to execute its inspection laws,' and is therefore null and void."

The tonnage charge or tax on the sale of the article, is a license tax, and a tax on the fertilizer itself.

In *Ward* v. *Maryland*, 12 Wallace, 418, at page 432, Mr. Justice Bradley, in his concurring opinion, referring to the license tax therein considered, says: "It is, in fact, a duty upon importation from one state to another under the name of a tax."

In *Brown* v. *Maryland*, 12 Wheat, at page 263, referring to the license required of importers of foreign merchandise, the court says: "An impost or duty on imports, is a custom or tax levied on articles brought into a county, and is most usually secured before the importer is allowed to exercise his rights of ownership over them, because evasions of the law can be prevented more certainly by executing it while the articles are in its custody. It would not, however, be less an impost or duty on the articles if it were to be levied on them after they were landed. The policy and consequent practice of levying or securing the duty before entering the port, does not limit the power to that state of things, nor, consequently, the prohibitions, unless the true meaning of the clause so confines it. What then are imports? The lexicon informs us they are "things imported." If we appeal to usage for the meaning of the word, we shall receive the same answer. They are the articles themselves, which are brought into a country. A duty on imports, then, is not merely a duty on the act of importation, but a duty on the thing imported. It is not, taken in its literal sense, confined to a duty levied while the article is entering the country, but extends to a duty levied after it had entered the country." This has reference to a tax on foreign commerce.

In the case of *Woodruff* v. *Parham*, 8 Wall, 129, it was held that the term "imports" in the clause in the constitution which declares that "no state shall, without the consent of congress, lay any imposts or duties on imports or exports," does not refer to articles carried from one state to another, but only to articles imported from foreign contries into the United States." This meaning of the term is also adopted in *Brown* v. *Houston*, 114 U. S., 622, and in *Coe* v. *Erral*, 116 U. S., at page 527, and in *Leisy* v. *Hardin*. These cases hold substantially that a tax, which would be an import if applied to foreign commerce, is, when imposed on articles imported from one state into another, a regulation of commerce.

IV.

THE THIRD ASSIGNMENT OF ERROR IS:

III. "That it (the court below) held that said charge or tax is an inspection law within the contemplation of said clause of said constitution, and therefore constitutional and valid."

The portions of the constitution referring to this subject are the following:

"The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare ot the United States; but all duties, imposts and excises shall be uniform throughout the United States." Art. 1 Sec. 8.

Section 10 (1) embraces the absolute prohibition upon state legislation.

Sec 10 (2) embraces the qualified prohibitions, and is in these words: "No state shall, without the consent of congress, lay impost or duty on imports and exports, except what may be necessary to execute its inspection laws, and the net produce of all duties and imposts laid by any state on imports and exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to revision and control of the congress."

It is plain from the above clause that the congress alone has the power to lay any duty either on imports ~~or exports~~ for the purpose of raising revenue. It may do so to "pay the debts and provide for the common defense and general welfare of the United States." If a state has the power to impose any duty at all it is for the purposes of inspection alone, and not for revenue purposes.

The circuit court conceded that the imposition cannot be sustained as a tax on merchandise, but held that it can be sustained as an inspection law.

On page 28 of the record, Judge Seymour, who delivered the opinion, says: "In the very recent case of *Vaight* v. *Wright*,

141 U. S., 62, Bradley, Judge, in rendering the opinion of the court, says: 'The question is still open as to the mode and extent in which state inspection laws can constitutionally be applied to personal property imported from abroad or from another state.' * * * * * * * * The point must necessarily be discussed in the decision of this case."

We have seen that the exclusive right to lay a duty on imports for the purpose of raising revenue rests in congress, and that there is a prohibition upon the states in that respect. The states under the confederation could lay duties on all merchandise imported from another state or from a foreign country.

It were needless to recur to the causes that led to the convention which framed the constitution, but, conspicuous among them was this—the abuse of the power of inter-state taxation. It was on this account that congress was given the exclusive control over the subject.

It is easily deducible from historic facts, that it must have been the intention of the framers of the constitution to limit and abridge the rights of the states in laying duties as much as it was in their power to do so, without depriving them of the right to manage their internal affairs in their own way. There was no method by which this could be accomplished without withholding from the states all power to impose duties on articles coming from other states. They could not have intended that New York could impose a duty on commerce going into that state from North Carolina under the name of an inspection law, which would be a burden on that commerce (and it may be said that every duty is a burden), but they intended simply that the state should have the right to pass necessary inspection laws, and that no property could be taxed under these inspection laws unless its *situs* was in the state and it was mingled with the mass of property in that state. It is impossible to conceive of a duty that would not be a restriction or burden upon commerce.

To pass inspection laws is one of the reserved powers of the states, but no greater rights were reserved than those which were exercised by the states at the time when the constitution was adopted. The right, then, to pass inspection laws must be confined to such laws as were passed during the colonial period, or the period of the confederation. There can be found no law imposing a duty on imports for inspection purposes during these periods.

The Federalist, No. 32.

The act of laying duties or imposts on imports or exports is considered in the constitution as a branch of the taxing power and not of the power to regulate commerce.

They are substantive provisions. "This prohibition, then, is

an exception from the acknowledged power of the state to levy taxes, not from the questionable power to regulate commerce."

Gibbons *v.* Ogden, 9 Wheat., 11.

"The restrictions, then, are on the taxing power not on that to regulate commerce. * * * * * * *

But the inspection laws are said to be regulation of commerce, and are certainly recognized in the constitution as being passed in the exercise of a power remaining with the states.

That inspection laws may have a remote and considerable influence on commerce will not be denied, but that a power to regulate commerce is the source from which the right to pass them is derived, cannot be admitted. The object of inspection laws is to improve the quality of articles produced by the labor of a country; to fit them for exportation, or it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the States and prepare it for that purpose. They form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the general governments, and which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, etc., are component parts of this mass."

Ibid, 12.

It will be observed that there is no reference to any duty or tax on the article imported, but the inference is that no such duty can be imposed as an inspection tax. The object of these laws is to prepare an article produced in the state for exportation or domestic use. They act on it before it becomes an article of interstate or foreign commerce and prepare it for that purpose. Thus it must necessarily follow that the property thus acted upon and prepared must be within the jurisdiction of the state. If its effect is to tax property in the state before it becomes interstate commerce, it must follow that it cannot affect interstate commerce which is in transit to the State. It is worthy of observation that the laws, with which inspection laws are associated in the foregoing extract, relate to subjects peculiarly within the jurisdiction of the state.

The tenth amendment to the constitution provides that "All powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

In another clause, the exclusive right to lay duties on imports and exports for revenue purposes is conferred on the Congress. The states reserved the right to adopt inspection laws or laws for the purpose of improving and preparing articles for

the domestic or foreign market. The articles must at the time of the inspection be within the jurisdiction of the state.

Voight *v.* Wright, 141 U. S., 62.
Leisey *v.* Hardin, 135 U. S., 100.

At page 438, the case of *Brown* v. *Maryland* contains the following: "A duty on imports, then, is not merely a duty on the act of importation, but is a duty on the thing imported. It is not, taken in its literal sense, confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country. The succeeding words of the sentence which limit the prohibition, show the extent in which it is understood. The limitation is, 'except what may be absolutely necessary for executing its inspection laws.'"

Now, the inspection laws, so far as they act on articles for exportation, are generally executed on land before the article is put on board the vessel; so far as they act upon importations, they are generally upon articles which are landed. The tax or duty of inspection, then, is a tax which is frequently, if not always, paid for service performed on land, while the article is in the bosom of the country. That is, while it mingled with the mass of property in the state.

"The states have the undoubted right 'to control their purely internal affairs, in doing which they exercise powers not surrendered to the national government, but whenever the law of a state amounts essentially to a regulation of commerce with foreign nations, or among the states, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity or its disposition before it has ceased to be an article of trade between one state and another, or another country, and thus it comes in conflict with a power, which, in this particular, has been exclusively vested in the general government, and is therefore void."

The tonnage tax is a tax on imports and comes in direct conflict with this exclusive power vested in congress. It indirectly inhibits the receipt and sale of an imported commodity by imposing the tax.

It imposes a burden or restriction upon an article when it is on its journey from Maryland to North Carolina and before it has reached its destination, and is an encroachment upon the commercial power of the congress. The fact the imposition is a small sum on each ton of fertilizer, does not vary the application of the rule.

Says Marshall, C. J., in *Brown* v. *Maryland, supra*, at page 439: "There is no difference, in effect, between a power to prohibit the sale of an article, and a power to prohibit its introduction into the country. The one would be a necessary consequence of the other. No goods would be imported if none

were sold. No object of any description can be accomplished by laying a duty on importation, which may not be accomplished with equal certainty by laying a duty on the thing imported in the hands of the importer."

"It is obvious that the same power which imposes a light duty, can impose a very heavy one—one which amounts to a prohibition."

"Questions of power do not depend on the degree to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it may be placed; and, at page 442, "referring to the thing imported." But while remaining the property of the importer in his warehouse in its original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition of the constitution."

"Any charge on the introduction and incorporation of the articles into and with the mass of property in the country must be hostile to the power given to congress to regulate commerce, since an essential part of that regulation, and principal object of it, is to prescribe a regular means for accomplishing that introduction and incorporation."

Brown *v.* Maryland, 12 Wheat, 448.

"If the states may tax all persons and property found in their territory, what shall restrain them from taxing goods in their transit through the state from one part to another for the purpose of re-exportation?"

Ibid, 449.

Under the articles of confederation there was no restriction upon the power of the several states to tax foreign or interstate commerce except the following provision in Article 6:

"No State shall lay any imposts or duty which may interfere with any stipulations in treaties entered into by the United States and congress assembled with any king, prince or state in pursuance of any treaties already proposed by congress to the courts of France and Spain."

Article 8 provided "that all charges of war and expenses that should be incurred for the common defence and general welfare of and allowed by the United States in congress assembled should be defrayed out of a common treasury, which should be supplied by the several states in proportion to the value of all land within each state; * * * and said taxes should be laid and levied by direction of the legislatures of the several states."

So the only prohibition of taxation by the States were those interfering with treaty stipulations.

In order to meet the requisitions of the federal government, and to defray the expenses of the state governments, the power

of the state, with that exception, to tax, directly or indirectly, was unlimited.

It was in the power of any state to exclude the products of any other state from entering its limits by such taxes as would be entirely prohibitive, and this was one of the main evils which it was intended by the framers of the constitution that it should do away with. In other words, the constitution established freedom of trade among the states.

Wilkinson *v.* Rahrer, 140 U. S., 545.

"The great benefit, however, to be derived from a national regulation of commerce, a benefit in which all the states would equally share, whatever might be their productions, was, undoubtedly, the removal of existing and injurious relations which the states had hitherto produced against each other."

2 Curtis on the Constitution, page 291.

In the case of *People* v. *Compagnie General Transatlantique* p. 59 of 107 U. S., Mr. Justice Miller, delivering the opinion of the court, says: "What laws may be properly classed as inspection laws under the provisions of the constitution must be determined largely by the nature of the inspection laws of the states at the time the constitution was framed." He refers to the statutes cited in *Turner* v. *Maryland*, and *Gibbons* v. *Ogden*. An examination of these and other statutes failed to disclose that any inspection charge or duty was ever laid on any article imported into a state. The inspectors were paid a regular salary in some cases, and in others the expenses of inspection were paid by owner or purchaser of the property, but this was done while the property was in the bosom of the state, in order to prepare it for exportation or domestic use, but never after it was in transit from the state to some foreign country or another state. That is, the charges were levied upon the article before it was delivered to the carrier for shipment and consequently before it became an article of inter-state or foreign commerce."

See Coe *v.* Errol, 116 U. S., 517.

In the case *Turner* v. *Maryland*, 107 U. S., 51, the court adopts the remarks of C. J. Marshall, in *Gibbons* v. *Ogden*: "The object of inspection laws is to improve the quality of articles produced by the labor of a country, to fit them for exportation, or, it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the states, and prepare it for that purpose." And on page 52 says: "In view of such legislation existing at the time the constitution of the United States was adopted and ratified by the original states, known to the framers of the constitution who come from the various states, and called inspec-

tion laws in these states, it follows that the constitution, in speaking of 'inspection laws,' included such laws, and intended to reserve to the states the power of continuing to pass such laws, even though to carry them out, and make them effective, in preventing the exportation from the state of the various commodities unless the provisions of the laws were observed, it became necessary to impose charges which amounted to duties or imposts on exports to an extent necessary to execute such laws." There is no reference here or in any other case to duties on imports, and in this case the duty was collected when the property was within the jurisdiction of the state.

The inspection laws of North Carolina before and at the time of the adoption of the constitution no doubt afford a fair sample of the other states. At that time the only articles required to be inspected was tobacco and a few other commodities. The inspectors were appointed by the inferior courts of the several counties. These statutes related to the preparation of domestic produce for exportation or domestic use, and the inspectors were paid by the counties. Rev. Statutes 1820, c. 120, c. 206. These acts were passed in 1777 and 1784.

Inspection laws are not, properly speaking, regulations of commerce. Their object is to improve the quality of articles produced by the labor of the country, and to fit them for exportation or domestic use.

All of the laws referred to in *People* v. *Compagnie General* and *Gibbons* v. *Ogden*, related to the preparation of domestic articles at home or for exportation.

These statutes are instances of the exercise by the states of the power to act upon an article grown and produced in a state before it becomes an object of foreign or domestic commerce.

Inspection laws act upon the subject before it becomes an article of foreign commerce or commerce among the States and prepared for that purpose.

Brown *v.* Maryland, 12 Wheat, 50.

The general law of North Carolina in regard to inspections have reference to the inspection of articles to prepare them for exportation.

2 Code of North Carolina, 2982.

It would be going very far to say that the state of North Carolina can declare that a bag of guano manufactured in Maryland and owned by a citizen of that state and shipped to North Carolina, and *in transitu*, is not an article of commerce, and this, too, before it is within the jurisdiction of the last-named state. Inasmuch as an inspection law has reference, according to general usage, to articles being prepared for exportation, and these articles are not commerce until they are inspected, and

this inspection is to be made before separated from the mass of property in the state, does it not follow that inspection laws cannot apply to articles imported into the state before they become mingled with the mass of property in the state, unless an inspection law affecting imports is a mere police regulation? This is very clearly intimated in the Virginia case, *Voight* v. *Wright*, 141 U. S., at page 63, which says: "The question is still open as to the mode and extent in which the state inspection laws can constitutionally be applied to personal property imported from abroad or from other states, whether such things can go beyond the identification and regulation of such things as are directly injurious to the health and lives of the people, and therefore not entitled to the protection of the commercial power of the government."

This court, in *New York* v. *Miln*, 11 Peters, at page 143, says: "The power to pass inspection laws, involves the right to examine articles which are imported, and are therefore directly the subject of commerce, and if any of them are found to be unsound or infectious, to cause them to be removed or even destroyed. But the power to pass these inspection laws is itself a branch of the general power to regulate internal police."

Passenger Cases, 7 How., 401.

In the case of *Leisey* v. *Hardin*, 135 U. S., 100, Chief Justice Fuller, discussing the question of interstate commerce, says:

"The power vested in congress 'to regulate commerce with foreign nations and among the several states and with the indian tribes' is the power to prescribe the rule by which that power is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the constitution. It is co-extensive with the subject on which it acts, and cannot be stopped at the external boundary of a state, but must enter its interior, and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered.

Gibbons *v.* Ogden, 9 Wheat, 1.
Brown *v.* Maryland, 12 Wheat., 419.

And while by virtue of its jurisdiction over person and property within its limits, a state may provide for the security of the lives, limbs, health and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to congress by the constitution, is not within the jurisdiction of the police power of the state, unless placed there by Congressional action.

Henderson *v.* Mayor of N. Y., 92 U. S., 259.
Railroad *v.* Husen, 95 U. S., 465.

Walling *v.* Michigan, 116 U. S., 446.
Robbins *v.* Taxing District, 120 U. S., 489.

The power to regulate commerce among the states is a unit, but if particular subjects within its operation do not require the application of a general or uniform system, the states may legislate in regard to them with a view to local needs and circumstances, until congress otherwise directs; but the power thus exercised by the state is not identical in its extent with the power to regulate commerce among the states. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries and highways, belongs to the class of powers pertaining to locality, essential to local inter-communication, to the progress and development of local prosperity and to the protection, the safety and the welfare of society, originally necessarily belonging to, and upon the adoption of the constitution, reserved by the states, except so far as falling within the scope of a power confided to the general government, when the subject-matter requires a uniform system as between the states, the power controlling it is vested exclusively in congress, and cannot be so encroached upon by the states, but, when in relation to the subject-matter different rules may be suitable for different localities, the states may exercise powers, which though they may be said to partake of the nature of the power granted to the general government, are not strictly such, but are simply local powers which have full operation until or unless circumscribed by the action of congress in effectuation of the general power."

Cooley *v.* Board of Wardens, 12 How., 299.

The Chief Justice places inspection laws among local laws, and it is conceded that an inspection law does not come under the rule of uniformity. Its mission is to prepare commodities for domestic or foreign use; that is, to make them marketable. There can be no necessity for the same laws in North Carolina and Georgia, but the tax or charge which we are considering is not of that character.

Fertilizers constitute a most important branch of commerce. So much so that by the Wilson tariff act they are admitted free of duty. Commerce in them is carried on largely with foreign nations and among the states. The charge or burden imposed on them affects their market value. The price will rise or fall as the charge may be higher or lower. The state of North Carolina imposes a tax of twenty-five cents per ton, the state of Georgia ten cents, the state of Virginia nothing. The rational result is that the foreign manufacturers can sell at a cheaper rate in Georgia than in North Carolina, and cheaper still in Virginia. The amount of the tax per ton is small, but amounts to a good deal when large quantities of fertilizers are

imported. The Wilson tariff bill imposes a duty of one dollar per ton on plaster of paris imported from abroad. Why is not the fertilizer tax as much a tariff duty as the tax on the plaster of paris? Suppose the amount of that were also one dollar per ton, what is the difference in principle?"

The Chief Justice further says, in *Leisey* v. *Hardin:* "That ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world. The laws of congress and the decisions of the courts are not denied. Being thus articles of commerce, can a state, in the absence of legislation on the part of congress, prohibit their importation from abroad or from a sister state? or, when imported, prohibit their sale by the importer? What is there in this case that does apply to our case? There is not an express prohibition on importation, but there is an express provision that the fertilizer cannot be sold until the charges are paid and the tags are affixed. A contrary view would give the state of Virginia, through which the fertilizer passes in its route from Baltimore to North Carolina, a right to tax the fertilizer.

Passenger Cases, 7 How., 445–446.

In 1865, the legislature of Nevada enacted that there should be levied and collected a capitation tax of one dollar upon every person leaving the state by a railroad, stage coach or other vehicle engaged or employed in the business of transporting persons for hire, which was held unconstitutional by this court. The court says, at page 46, "It will be observed that it was not the extent of the tax in that case which was complained of, but the right to levy any tax of that character.' So in the case before us, it may be said that a tax of one dollar for passing through the state of Nevada by the stage coach or railroad cannot sensibly affect any function of the government or deprive a citizen of any valuable right, but if the state can tax a railroad passenger one dollar, it can tax him one thousand dollars. If one state can do this, so can every other state, and thus one or more states, covering the only practicable routes of travel from the east to the west or from the north to the south, may totally prevent or seriously burden all trans portation of passengers from one part of the country to the other."

Crandall *v.* Nevada, 6 Wall., at page 46.

See, also:

Passenger Cases, 7 How., at page 404.

"The rule has been asserted with great clearness that whenever the subjects over which a power to regulate commerce is asserted are in their nature national, or admitting of one uni-

form system or plan of regulation, this may justly be said to be of such a nature as to require exclusive legislation by congress. * * * * * * * Surely transportation of passengers or merchandise through a state, or from one state to another, is of this nature. It is of national importance that over that subject there should be but one regulating power, for if one state can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportations, every other may, and thus commercial intercourse between states remote from each other may be destroyed.

Bowman *v.* Chicago & N. W. Ry Co., 125 U. S., 465.

The court further says: "It is impossible to justify this statute of Iowa by classifying it as an inspection law. * * * * * * * The object of an inspection law," said Chief Justice Marshall, in *Gibbon* v. *Ogden*, "is to improve the quality of articles produced by the labor of a country, to fit them for exportation, or, it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce among the states, and prepare it for that purpose."

"They are confined to such particulars as in the estimation of the legislature, and according to the customs of trade, are deemed necessary to fit the inspected thing for the market. It never has been regarded as within the legitimate scope of inspection laws to forbid trade in respect to any known article of commerce, irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequences of its use or abuse." *Ibid.*

Welton *v.* Missouri, 91 U. S., 346.

In the case of *Covington* v. *Commonwealth*, 154 U. S., 204, it was decided that the state of Kentucky had no right to fix the fees of a bridge company for using a bridge extending across a navigable river from one state to another. The court says: "Congress has no right to interfere with police regulations relating exclusively to the internal trade of the states; that congress and the states have concurrent jurisdiction of laws regulating pilots, quarantine and inspection laws and the policing of harbors, the improvement of navigable channels, the regulation of wharves, pens and docks, the construction of dams and bridges across the navigable waters of a state and the establishment of ferries." In these cases so long as congress fails to act the state can proceed to do so. The court further says: That while the states have the right to tax the instruments of such commerce as other property of like description is taxed, under the laws of the several states, they have no right to tax such commerce itself.

Munn *v.* Illinois, 113 U. S., 113.
Chicago *v.* Iowa, 94 U. S., 155.
Ruggles *v.* Illinois, 108 U. S., 526.
Hall *v.* DeCuir, 95 U. S., 485.
Wabash *v.* Illinois, 118 U. S., 557.

In *Turner* v. *Maryland*, 107 U. S., p. 38, it is said, "No inspection was involved except that of tobacco grown in Maryland." The court says at page 50: "The thing required to be done in respect to the hogshead of tobacco in the present case, aside from any inspection of quality, are to be done to prepare and fit the hogshead as a unit, containing the tobacco, for exportation, and for becoming an article of foreign commerce or commerce among the states, and are to be done before it becomes such an article. * * *" The court then refers to *Gibbon* v. *Ogden*, and quotes with approval the definition of an inspection law given by it. At page 51: "The question as to whether the charges for such examination and its attendant duties are 'absolutely necessary' was not before the state court, and was not passed upon by it, and cannot be considered by this court."

The law acted upon the tobacco while it was in the bosom of the country and the charge was imposed before it had become an article of foreign or inter-state commerce. Under the terms of the act all of these requirements were to be complied with before it became an article of either sort. Had the "outage" applied to the article after it had been shipped or started on its journey it would have been a regulation of commerce.

Coe *v.* Errol, 116 U. S., 517.

The opinion in this case was written by Mr. Justice Blatchford. In it he stated: "Such a law is an inspection law, and may be executed by imposing a 'tax or duty of inspection,' which tax, so far as it acts upon articles for exportation, is an exception to the prohibition on the states against levying duties on exports, the exception being made because the tax would otherwise be within the prohibition. If this be so, then the duty on exports must be laid while the article is domestic commerce, and when it is about to become an article of foreign or inter-state commerce. This does not apply to our case, because in that the character of inter-state commerce is impressed upon it before the charge is levied.

Brimmer v. *Rebman*, 138 U. S., 78, is a case in which a statute of Virginia was declared unconstitutional, as discriminating against the products of other states. The court, however, said that if it had applied to all the states alike, this would not have brought it in harmony with the constitution. In this case there was an inspection fee assessed on meat.

The opinion cites:

Minnesota *v.* Barker, 136 U. S., 312.
Railroad *v.* Husen, 95 U. S., 465.
Walling *v.* Michigan, 116 U. S., 446.

The tonnage tax is a revenue law. The state has the right to pass inspection laws and to adopt police regulations, but no law imposing a burden on inter-state commerce will be upheld, although it appears in the guise of an inspection law.

Peet *v.* Morgan, 19 Wall., 581.

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

Henderson *v.* Mayor of N. Y., 92 U. S., 259.
Brown *v.* Maryland, 12 Wheat., 436.

This principle is approved in *Minnesota* v. *Barber*, 136 U. S, 313, in which the court says:

"The presumption that this statute was enacted in good faith, for the purpose expressed in the latter, namely, to protect the health of the people of Minnesota, cannot control the final determination of the question whether it was repugnant to the constitution of the United States. There may be no purpose upon the part of the legislature to violate the provisions of that instrument, and yet a statute enacted by it under the forms of law, may by its necessary operation be destructive of rights granted or secured by the constitution. In such case the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void."

Henderson *v.* Mayor of N. Y., 92 U. S., 259.

Section 2193 of the North Carolina Code prohibits any merchant or other person to sell commercial fertilizers unless the labels and tags are attached thereto, as well as any person who shall remove the same, under a penalty or fine of ten dollars, and "any agent of any railroad or other transportation company who shall deliver any such fertilizer in violation of this section shall be guilty of a misdemeanor." Record, p. 6.

This is a penalty imposed upon freedom of commerce between the states. "Any person shall move, or any agent of a transportation company shall deliver," &c., refers to carriers. The prohibition on the agent is likewise a prohibition on the company.

These provisions are in conflict with Rev. Stat. U. S., sec. 5258, which provides that "every railroad company in the United States, whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road boats, bridges and ferries, all passengers, troops, government supplies, mails, freight and property on their way from any state to another, and to secure compensation therefor, and to

connect with roads of other states so as to form continuous lines for the transportation of the same to the place of destination."

This act was passed to remove trammels upon transportation between different states. Rev. Stat., sections 4252 to 4289, relate to transportation by water.

Railroad Company *v.* Richmond, 19 Wall, 584.
County of Mobile *v.* Kimball, 102 U. S., 691.
Bowman *v.* Railroad, 125 U. S., 465.

This case is not governed by the laws which relate to pilotage, half pilotage, quarantine and harbor laws, port duties, wharfage, the construction of bridges, and dams across navigable streams and the establishment of ferries.

These rules are not regulations of that portion of commerce, the regulation of which is exclusively vested in congress. They affect commerce remotely, and are rather aids to it than regulations of it, and are of a local concern. They are not national, and do not require uniformity of regulation.

Wilson *v.* Marsh Co., 2 Peters, 245.
Passenger Cases, 7 How., 402.
Cooley *v.* Board, 12 How., 299.
Conway ~~Conney~~ *v.* Taylor, 1 Black., 603.
Steamship *v.* Juliff, 2 Wall, 450.
Ex parte McNeil, 13 Wall, 236.
Cannon *v.* New Orleans, 20 Wall, 577.
Keokuk *v.* Keokuk, 95 U. S., 90.
Pound *v.* Turk, 95 U. S., 459.
N. W. Union P. Co. *v.* St. Louis, 100 U. S., 423.
Wilson *v.* McNomu, 102 U. S., 236.
Mobile *v.* Kimball, 102 U. S., 691.
Cincinnati *v.* Cattlesburg, 105 U. S., 559.
Escauaber *v.* Chicago, 107 U. S., 678.
Cardwell *v.* Bridge Co., 113 U. S., 205.
Gloucester Ferry *v.* Pennsylvania, 114 U. S., 203.
Morgan *v.* Louisiana, 118 U. S., 455.
Huse *v.* Glover, 119 U. S., 543.
Ouochita *v.* Aiken, 121 U. S., 444.
Leisey *v.* Hardin, 135 U. S., 100.
Lyle Gouf ~~Lamb~~ *v.* Mobile, 135 U. S., 340.

Perhaps some of the divergence of views upon this question among former judges may have arisen from not always bearing in mind the distinction between commerce as strictly defined and its local aids or instruments, or measures taken for its improvement. Commerce with foreign countries and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and

transit of persons and property, as well as the purchase, sale and exchange of commodities.

For the regulation of commerce as thus defined, there can be only one system of rules applicable alike to the whole country, and the authority which can act for the whole country, can alone adopt such a system. Action upon it by separate states is not, therefore, permissible. Language expressing the exclusiveness of the grant of power over commerce as thus defined may not be inaccurate, when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce

Mobile *v.* Kimball, 102 U. S., 691.
Gloucester *v.* Pennsylvania, 114 U. S., 203.

When we speak of the power conferred on congress to regulate commerce as an exclusive power, it must be taken with the qualification that the commerce referred to is, "All that portion of commerce with foreign countries and between the states which consist in the transportation, purchase, sale and exchange of commodities."

Mobile *v.* Kimball, *supra.*

"The state may tax the instruments of interstate commerce as it taxes other similar property, provided such tax be not laid on the commerce itself."

"But whenever such laws, instead of being of a local nature, and affecting interstate commerce but incidentally, are national in their character, the non-action of congress indicates its will that such commerce shall be free and untrammelled, and the case falls within the third class of these laws wherein the jurisdiction of congress is exclusive."

Brown *v.* Houston, 114 U. S., 622.
Bowman *v.* Railroad Company, 125 U. S., 465.

That while the states have the right to tax the instruments of such commerce as other property of like description is taxed, under the laws of the several states, they have no right to tax such commerce itself, is too well settled to require the citation of authority.

This proposition was first laid down in *Crandall* v. *Nevada*, 6 Wall., 35, and has been steadily adhered to since. That such power of regulation as they possess is limited to matters of a strictly local nature, and does not extend to fixing tariff upon passengers or merchandise, carried from one state to another, is also settled by more recent decisions.

Covington *v.* Kentucky, 154 U. S., 204.

Fertilizer is an article of commerce as much as beer, spirits or any other article, and when in transit from one state to

another and, before it comes within the political jurisdiction of the state of its destination, is interstate commerce.

Now a charge or tax, which affects this fertilizer before it comes within the bosom of the state, must necessarily be a burden upon a regulation of interstate commerce, and not a local regulation, and as a consequence cannot be an inspection law.

Judge Seymour failed to distinguish between commerce itself and the instruments of and aids to commerce. The former, when interstate or foreign cannot be regulated or taxed by a state; the latter can be. The fertilizer tax is laid upon the article of commerce and not upon its incidents.

If, from its nature, the thing imported does not belong to commerce, or if its condition, from putrescence or other cause, is such when it is about to enter the state that it no longer belongs to commerce, or in other words is ~~but~~ not a commercial article, then the state power may exclude its introduction, and as an incident to this power, a state may use means to ascertain the fact."

In re Rahrer, 140 U. S., 545.

A duty imposed by the states, in order to conform to the constitution and to be consistent with the exclusive power of regulation granted to congress, must be for the exclusive purpose of ascertaining whether or not the article does belong to commerce, and for no ulterior purpose.

In order not to conflict with this exclusive power it cannot be laid except to identify and regulate such things as are directly injurious to the health and lives of the people, and therefore not entitled to the protection of the commercial power of the government."

Voight *v.* Wright, 141 U. S., 62.

An inspection law is not of national, but of local concern, and does not require uniformity of regulation, and, as a corollary, when a tax, professing to be an inspection charge, is laid on any subject of interstate commerce (which necessarily is national in its character, and does require uniformity of regulation), it is unconstitutional. Fertilizers constitute a most important branch of commerce, and a tax laid on them, to be collected while they are on the way into the state and before they have left the hands of the carrier, must be a violation of the commerce clause of the constitution. Anything which amounts to a restriction upon their free access into the state disturbs the uniformity of regulation prescribed by the constitution. The imposition of a tax of twenty-five cents per ton in North Carolina, ten cents in Georgia, freedom from tonnage tax in Vir-

ginia, illustrate a gross violation of the rule of uniformity in regard to our taxation of an article of interstate traffic.

In *Bowman* v. *Chicago*, 125 U. S., 465, Mr. Justice Bradley says: "Where state laws alleged to be regulations of commerce have been sustained, they were laws which related to bridges or dams across streams wholly within the state, or police or health laws, or to subjects of kindred nature, not strictly of commercial regulation. But the transportation of passengers or of merchandise from one state to another is in its nature national, admitting of but one regulating power, and it was to guard against the possibility of commercial embarrassment which would result if one state could directly or indirectly tax persons or property passing through it, or prohibit particular property from entrance into the state, that the power of regulating among the states was conferred upon the federal government."

"If in the present case the law of Iowa operated upon all merchandise sought to be brought from another state into its limits, there could be no doubt that it would be a regulation of commerce among the states," and he concludes that this must be so, though it applied to one class of articles of a particular kind."

"It is impossible to justify this statute of Iowa by classifying it as an inspection law * * * * * * * The nature and character of the inspection laws of the states contemplated by this provision of the constitution were very fully exhibited in the case of *Turner* v. *Maryland*, 107 U. S., 38." The object of inspection laws is set forth in *Gibbons* v. *Ogden*.

"It is to improve the quality of articles produced by the labor of a country, to fit them for exportation or domestic use."

Mr. Justice Field, in *Leisey* v. *Hardin*, *supra*, says: "The plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit, but import into Iowa beer which they sell in original packages. Under our decision in *Bowman* v. *Railway Company*, 125 U. S., 465, they had the right to import this beer into that state and in the view which we have expressed, they had the right to sell it, by which act alone it would become mingled in the common mass of property within the state up to that point. * * * the state could not interfere by seizure or other action, in prohibition of importation and sale by the foreign or non-resident importer." * * * although, if at the same time if directly dangerous in themselves, the state may take appropriate measures to guard against injury before it obtains complete jurisdiction over them."

In *Cutcher* v. *Kentucky*, 141 U. S., 47, Mr. Justice Bradley, says: "There are undoubtedly many things which in their nature are so deleterious or injurious to the lives and health of the people as to lose all benefit of protection as articles or things of commerce. * * * * while it is only such

things as are clearly injurious to the lives and health of the people that are placed beyond the protection of the commercial power of congress, yet when that power or some other exclusive power of the federal government is not in question, the police power of a state extends to almost everything within its borders."

An inspection tax, from the very nature of the object which it promotes, must necessarily be laid on property within the jurisdiction of the state. If it can be imposed in the shape of an impost duty, it must be on some object which does not bring the imposition into conflict with the commerce clause of the constitution. It must be akin or analagous to the fees levied for pilotage, quarantine," &c., which do not affect inter-state commerce but are aids to it, and which are intended to guard the safety, health and lives of the people, these are never imposed on the cargo.

Morgan *v.* Louisiana, 118 U. S., 455.

Inspection laws cannot affect inter-state commerce, except in so far as they may prevent the introduction into the state of something which would endanger the health or life of the people.

New York *v.* Miln, 11 Pet., 102.

Inspection of imports must relate principally to health.

Passenger Cases, 7 How., 401.

The tonnage tax professes to be laid "for the purpose of defraying the expenses connected with inspection of fertilizers and fertilizing material. (Record, p. 4.) There are various requirements to be complied with in order not to be entangled in the meshes of the law, and numerous penalties are prescribed for non-compliance with its provisions. It does not appear on the face of the act that its object is to separate the fertilizers in good condition from those which are spurious, but good, bad and indifferent alike come within its condemnatory provisions. If any person sells or offers for sale any fertilizer before the tax is paid and tags are affixed, "the fertilizer so sold or offered for sale shall be subject to seizure and condemnation in the same manner as is provided in this chapter for the seizure and condemnation of spurious fertilizers." (Sec. 7, record, pp. 4 and 5.) The proceedings for seizure and condemnation are prescribed in section 2192, record, page 5.

After setting forth the substance of the affidavit to be made, this section provides that the clerk shall issue his order to the sheriff * * * to seize and hold the fertilizer "until the defendant shall give bond in double the value, and the judgment shall be for double the value of the fertilizers." This is a con-

fiscation law. The purpose of the act, then, is not to ascertain what fertilizers are spurious, but to raise revenue by condemnation of the fertilizer, no matter what its condition may be.

It cannot be upheld as a police regulation, first, because it affects the sound as well as the spurious article; second, because, so far as it affects fertilizers imported into the state, it affects them before they become incorporated with the mass of property in the state.

Railroad *v.* Husen, 95 U. S., 465.
Henderson *v.* Mayor of N. Y., 92 U. S., 269.

The tax is to be paid and other requirements are to be performed while the fertilizer is in transit, or an article of inter-state commerce. No time for the inspection is mentioned in the act. So far as inter-state commerce is concerned, it may be made, under the act, either before or after delivery.

The constitution confers on congress the power "to regulate commerce among the states." This is an exclusive right so far as commercial articles or articles of traffic are affected. It also prohibits any state from laying "any duty of tonnage." Suppose, instead of laying a tax on fertilizer, the state had levied a duty of tonnage to pay the expenses connected with the inspection of fertilizers, would not this be void? If so, why not in our case, the commerce clause being equally prohibitive on the state.

Black's Handbook of American Constitutional Law, pages 271 to 273.

Under the general law contained in chapter 28, vol. 2 of the Code of North Carolina, it is provided that inspectors shall be appointed by the county commissioners, and their fees fixed by them. In this law there is no provision for the inspection of fertilizers. It relates exclusively to the preparation of tobacco and other articles therein named for exportation, and the inspection fees are to be paid by the exporter or purchaser.

The whole transaction relates to commerce within the jurisdiction of the state.

In the original act, imposing the license tax of $500 (Code N. C., sec. 2190), there is no reference to inspection, except in section 2196, in which it is provided that "the department of agriculture shall establish an agricultural experiment and fertilizer control station, and shall employ an analyst skilled in agricultural chemistry. It shall be the duty of said chemist to analyze such fertilizers and products as may be required by the department of agriculture, and to aid, as far as practicable, in suppressing fraud in the sale of commercial fertilizers." This is not changed by the act of 1891.

The fees for this analysis ought to have been paid out of the state treasury, but there is but a small quantity of fertilizer

manufactured in North Carolina, while there is a very large quantity imported into it from Baltimore, Richmond and other places outside of the state. So the legislature imposed this tax for the purpose of imposing on the non-resident manufacturers the burden of supporting the department. It is a discriminating tax.

"The congress shall have power to lay and collect taxes, imposts and excises."

Constitution, Art. 8, sec. 8, par. 1.

"No tax or duty shall be laid on articles imported from any state."

Art. 1, sec. 9, par 5.

"No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

Art. 1, sec. 10, par. 2.

The words "imposts, imports and duties" have the same meaning in each of said clauses, and refer to foreign commerce alone. This is the sense in which the word "impost" in the inspection clause is employed.

Brown *v.* Maryland, 12 Wheat, 419.
Woodruff *v.* Parham, 8 Wall, 123.
Brown *v.* Houston, 114 U. S., 622.
Coe *v.* Erral, 116 U. S., 517.

V.

THE FOURTH ASSIGNMENT OF ERROR IS:

IV. "That it (the court below) held that the said charge or tax is applicable by law exclusively to purposes of inspection of fertilizers and fertilizing materials, whereas it should have held that the same, upon the face of the various statutes relating to the subject, is applicable to purposes foreign to inspection, to-wit, to pay the salary of the analyst (Code, sec. 2196), the expenses of the geological museum and publication of the "Geology of North Carolina" (Code, sec. 2198), the expenses of preparing hand-books with illustrated maps, in regard to mines, minerals, forests, soils, climates and water powers, fisheries, mountains, swamps, industries and other statistics, to give information to immigrants, and to make expositions thereof and to offer premiums (Code, sec. 2199); the expenses of establishing and keeping a general land and mining registry (sec. 2201); expenses of the North Carolina Industrial Association, five hundred

dollars per year (sec. 2206); expenses of the North Carolina Industrial School (Agricultural and Mechanical College), five thousand dollars per year, (Acts 1885, ch. 308, sec. 4; Acts 1887, ch. 2110, sec. 1); the expenses of publication of geological reports, (Acts 1887, ch. 409, sec. 15)."

On page 26 of the record the opinion of the circuit court reads: "But it is contended by the plaintiff that the law under consideration in this case shows upon its face by various provisions made for the expenditure of the money collected under the law that the intention of the legislature was to collect a sum more than sufficient to pay the expenses of inspection." We do contend that on the face of the acts the money to be raised by this tax is to be appropriated to objects foreign to inspection, and as such were enacted for the purpose of raising revenue. The fact that it is called an inspection law cannot clothe it with that exclusive character when the evident effect of it is to raise a revenue to be appropriated to different objects "Nomenclature avails but little against the force of the context."

Section 2196 of The Code provides that "the department of agricultute shall establish an agricultural experiment control station, and shall employ an analyst * * * whose duty it shall be to analyze such fertilizers and products as may be required by the department of agriculture, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall * * * carry on experiments on the nutrition and growth of plants, with a view to ascertain what fertilizers are best suited to the various crops of this state, and whether other crops may not be advantageously grown on its soil, and shall carry on such other investigations as the department may direct. He shall make reports. * * * His salary shall be paid out of the funds of the department of agriculture."

Sec. 2198 provides "that the geological survey is hereby made and constituted a co-operative department with the department of agriculture, and the geological museum and the collections therein shall at all times be accessible to the said department. The geologist shall prepare * * illustrations of the agricultural industries, products and resources of the state * * abstracts of the survey * * in illustration of the advantages of this state and in promotion of the general purposes of immigration. In return for such service the state geologist may have all his marls, soils, minerals, and other products analyzed by the chemist at the laboratory of the department station free of charge, and the board of agriculture is hereby authorized to pay the necessary expenses of the geological museum and they may authorize and supervise the publication of * * the 'Geology of North Carolina.'"

Section 2199 provides that, "The department shall prepare hand books, with maps, which shall contain all necessary infor-

mation in regard to mines, minerals, forests, soils, climates, waters and water-powers, fisheries, mountains, swamps, industries, and all such statistics as are best adapted to give proper information of the attractions which the state gives to immigrants, and shall make illustrative exposition thereof whenever practicable at inter-national exhibitions, and shall have authority to offer premiums for the encouragement of agriculture and mechanical produce and the raising of improved live stock in this state."

Section 2200. "The said department shall be authorized, in the interest of immigration, to employ an agent or agents at points in this country as it may deem expedient and desirable," and section 2201, "to establish and keep in its office a general land and mining registry." Section 2206: "To set apart and appropriate annually of the money secured from the tax on fertilizers, the sum of five hundred dollars for the benefit of the North Carolina Industrial Association, to be expended under the direction of the board of agriculture."

Chapter 308 of the Acts of 1885 is entitled "An act to establish and maintain an industrial school." Section 4 of said act provides: "The board of agriculture shall apply to the establishment and maintenance of said school such part of their funds as is not required to conduct the regular work of the department: *Provided*, that not more than five thousand dollars of these funds shall be offered to the establishment of the school in one year."

By chapter 410, Acts of 1887, the name of the industrial school is changed to "The North Carolina College of Agriculture and Mechanic Arts." And in section 6 it is provided that "the board of agriculture shall turn over to the establishment and maintenance of said college" the whole residue of their funds from licenses on fertilizers remaining over and not required to conduct the regular work of the department. This provision is repealed by section 2 of chapter 348 of the Acts of 1891. This revives the 4th section of chapter 308 of the Acts of 1885.

Chapter 426, Acts 1891, making an appropriation of $500 to the Industrial Association does not repeal chapter 2206 of The Code, but is an additional appropriation, and the appropriation of $10,000 for 1891 and 1892 to the Agricultural and Mechanical College does not repeal former appropriations.

Section 5, chapter 348, Acts of 1891.

Acts of 1887, chapter 409, sec. 15, provides: "All expenses incurred after the present fiscal year for the publication of geological reports may be paid out of the agricultural fund."

Under section 2208 of The Code, the fertilizer tax is appropriated for the purposes named in the foregoing acts, none of which bear any relation to the expenses connected with the inspection of fertilizers.

VI.

THE FIFTH, SIXTH, SEVENTH, EIGHTH AND NINTH ASSIGNMENT OF ERRORS, WHICH WILL BE CONSIDERED TOGETHER:

V. "It is held that the said tax is absolutely necessary to execute the inspection of fertilizers, whereas it should have held that the tax is much in excess of what is necessary therefor."

VI. "That the court refused to consider the evidence introduced to show that the amount of money raised by said tax was much in excess of what was absolutely necessary for that purpose."

VII. "That the evidence showed that the tonnage tax collected from January 21, 1891, to January 1st, 1892, was $33,264.08, and the absolutely necessary expenses of executing the inspection did not exceed $10,000, and the court held that this excess was not material to show that the charge was not an inspection law under the constitution."

VIII. "That the evidence showed that the tonnage tax collected form January 1st, 1892, to January 1st, 1893, amounted to $27,690.16, and the necessary cost of inspection did not exceed more than $10,000, and the court held that this excess was not material to show that it was not an inspection law."

IX. "That the evidence showed that the tonnage tax collected for the months of January, February, March, April and May, 1893, was $22,567.25, and the cost of inspection did not exceed $5,000, and the court held that this excess was not material to show that it was an inspection law."

The administration of the fund can be considered in order to ascertain the purpose and effect of the act.

Yale Lock Co *v.* Sargent, 117 U. S., 536.

The circuit court (record, pages 22 to 26) discusses the question involved in said assignments. On page 23, Judge Seymour says: "I think that in cases of this character, the court is not required to go into an examination of the question of whether the imposition is excessive unless for the purpose of deciding whether the tax is only colorably an inspection charge or a charge of a kindred character." This is an admission that the courts can consider the question whether the act is really and in effect an inspection law.

He refers to *Ouachita Packet Co.* v. *Aiken*, 121 U. S., 444, to illustrate his position. This case as well as *Huse* v. *Glover*, 119 U. S., 543, relate to works of a local character, and have no reference to such commerce as is within the exclusive jurisdiction of Congress. Besides there is no provision of the constitution limiting wharfage, port dues, etc., to such as may be absolutely necessary.

In regard to inspection laws, such duties as are imposed by

the states must be absolutely necessary for executing the inspection. This leaves no margain for an excessive levy.

In *McCullock* v. *Maryland*, 4 Wheaton, 316, Chief Justice Marshall, discussing the power of congress to incorporate a bank, says, at page 411: "But the constitution of the United States has not left the right of congress to employ the necessary means for the execution of the powers conferred on the government to general reasoning. To its enumeration of powers is added that of making 'all laws which shall be necessary and proper for carrying into execution the foregoing power, all other powers vested by this constitution, in the government of the United States, or in any department thereof.'"

He further says, at page 413: "But the argument on which most reliance is placed, is drawn from that peculiar language of this clause. Congress is not empowered by it to make all laws, which may have relation to the powers conferred on the government, but such only as may be "*necessary and proper*" for carrying them into execution. The word necessary is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means and leaves to congress in each case, that only which is most direct and simple."

"Is it true that this is the sense in which the word "necessary" is always used. Does it always import an absolute physical necessity, so strong, that one thing to which another may be termed necessary, cannot exist without that other. We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient or useful or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in this rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, that many words which import something excessive, should be understood in a more mitigated sense—in that sense which common usage justifies. The word "necessary" is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary.

To no mind would the same idea be conveyed by these several phrases. The comment on the word is well illustrated by the passage cited at the bar, from the 10th section of the 1st article of the constitution. It is, we think, impossible to compare the sentence which prohibits a state from laying "imposts, or duties on imports or exports, except what may be *absolutely* necessary for executing its inspection laws," with that which authorizes congress "to make all laws which shall be necessary and proper for carrying into execution" the powers of the general government, without feeling a conviction, that the convention understood itself to change materially the meaning of the word "necessary," by prefixing the word "absolutely."

The expressions "necessary" and "absolutely necessary" are thus contrasted by the great Chief Justice, and if any duty at all, except as a matter of police, can be laid on a commodity imported into the state, before it comes within its political jurisdiction, it must be limited in amount to what is absolutely necessary. There is no choice.

It is contended that the provision that the "net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of congress," gives to congress the exclusive right to question the constitutionality of the levy. If this be so, the prohibition against the states to levy duties on imports and exports does not have the effect to make them null and void.

There is no political question involved in this case; a judicial one is raised.

Georgia *v.* Stanton, 6 Wall., 50.

It is true congress can control these matters, but congress has not done so. And if the individual who has sustained an injury by these laws cannot resort to the courts, he will be deprived of the means of having his grievances redressed. There is no wrong without an adequate remedy in the courts; a failure of congress to act cannot be held to make an act legal which would otherwise be unconstitional. Nor can it deprive the injured party of his remedy. Non-action by congress is no sanction to the state to regulate commerce.

"The question whether the particular duties exceed what is absolutely necessary for the execution of an inspection law, may be made a judicial question; and in addition to this the law imposing the inspection duty is at all times subject to the revision and control of congress."

2 Curtis on the Cons., 369.

The power of a state to lay this tax cannot be claimed as a reservation, because at the time when the constitution was

adopted there were inspection laws in force in the several states, but none can be found which imposes any duty on imports. This privilege to the extent to which it is conferred was given by the constitution of the United States.

VII.

THE TENTH, ELEVENTH, TWELFTH, THIRTEENTH AND FOURTEENTH ASSIGNMENTS OF ERROR are set forth on pages 122 and 123 of the printed record.

All the questions raised by these exceptions have been considered in the discussion of the preceding assignments of error.

THOS. N. HILL,
JOHN W. HINSDALE,
Solicitors of Complainant and Appellant.

March 7th, 1896.

No. 311 Sup. Ct. Reply Br. of Mr. Kimsdale

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

Filed May 18, 1896.

No. 311.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS *et al.*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

BRIEF IN REPLY OF COUNSEL FOR APPELLANT.

FIRST. THE ACT OF JANUARY 21ST, 1891 (PUBLIC LAWS OF 1891, CH. 9), ENTITLED AN ACT TO AMEND CHAPTER 1, VOLUME 2, OF THE CODE, RELATING TO AGRICULTURE AND GEOLOGY, IS UNCONSTITUTIONAL UPON ITS FACE.

This act must be read in connection with the other statutes *in pari materia*. It undertakes to make certain specific amendments to certain sections in the chapter of The Code relating to agriculture and geology. The presumption is that the legislature did not intend to amend the other sections of the chapter which are not mentioned in the amendatory act, and it would be a strained construction to hold that section 10 of the amendatory act, which provides that all laws and clauses of laws in conflict with this act are hereby repealed, was intended to repeal those sections of the said chapter which were not mentioned. His honor Judge Seymour takes this view. (See record, p. 28.)

It is true the Act of 1891 declares that, "for the purpose of defraying the expenses connected with the inspection of fertilizers and fertilizing materials in this state, there shall be a charge of twenty-five cents per ton;" but the act does not declare that this is the only purpose; and under the uniform construction of the law by the board of agriculture and the

attorney general of the state, the funds arising from this tax have been appropriated to the other purposes authorized by law.

An examination of chapter 1, volume 2 of The Code, will disclose the fact that the board of agriculture is charged with the maintenance and support of the following objects:

1. An analyst, whose duty it shall be not only to analyze fertilizers, but also to carry on experiments on the nutrition and growth of plants and such other investigations as the department may direct. See Vol. II, Code, sec. 2196. He is also to make analyses for purposes connected with the hygienic duties of the superintendent of health. Such analyses shall include soil, drinking water and articles of food. (See Code, sec. 2197.) His salary is expressly made payable out of the funds of the department of agriculture. This section is specially amended by the Act of 1891, and therefore is not repealed by this act.

2. Section 2198 of The Code provides that the state geologist may have all his marls, soils, minerals and other products analyzed by the state chemist at the laboratory of the department free of charge, and the board of agriculture is hereby expressly authorized to pay the necessary expenses of the geological museum, and they may authorize and supervise the publication of the second volume of the Geology of North Carolina. This section is not repealed, but is expressly amended by the Act of 1891. Thus an analyst is to be employed for other purposes than the inspection of fertilizers, and he is to be paid out of the funds of the department of agriculture, which are derived solely from the so-called inspection tax, and these funds are thus diverted from their proper application.

The defendants contend (see brief, page 5,) that the fertilizer tax fund is relieved from the appropriation for the support of the *geological survey*. This is admitted, but it is the only expenditure in this connection of which the board of agriculture has been relieved. Section 2198 has not been repealed or amended in any other respect, and the board of agriculture has accordingly continued to expend the funds arising from the fertilizer tax in the support and maintenance of the geological museum. The curator's salary of $900 per annum (see record, p. 69) is not otherwise provided for.

3. The department of agriculture is directed by section 2199 to prepare hand-books with maps, containing all necessary information in regard to the mines, minerals, forests, etc., and statistics for immigrants, and make illustrative expositions of the attractions of the state whenever practicable at international exhibitions, and to offer premiums for the encouragement of agricultural and mechanical pursuits, and the raising of improved livestock in this state.

This section was left untouched upon the Act of 1891, and the board of agriculture have accordingly, under warrant of this law, and under the advice of the attorney general (printed record, pp. 84, 85, 86) appropriated $9,000 to make an exhibit of North Carolina's resources at the World's Fair at Chicago (record, p. 40); $1,300 to the Secretary, who devoted an entire year to the World's Fair work; and in addition to this the board appropriated $300 more to the same work. (See record, p. 79.) All this came out of the fertilizer tax fund.

Feeling the force of this appropriation, the defendants at first pretended that it was nothing but a loan. (See bill of complaint, p. 17.) But when confronted with the records of the board (record, pp. 81 and 84), they admit it to be an appropriation, and make a weak excuse for having solemnly represented it to be a loan in their sworn answer.

4. Section 2200 authorizes the department to employ immigration agents in foreign countries. There is no provision of law for paying them except out of the fertilizer tax.

5. Section 2201 of The Code provides for establishing and keeping a general land and mining registry at the expense of the department. This has never been repealed.

6. Sec. 2206 provides for the annual appropriation of $500 for the North Carolina Industrial Association. The plaintiff contends that this appropriation has not been repealed. (See former brief, p. 58, where the question of repeal is discussed.)

7. The $5,000 annual appropriation to the N. C. College of Agriculture and Mechanic Arts is still in force. Acts 1885, ch. 308, Acts 1887, ch. 418 (see former brief, p. 58).

For what purpose defendants' counsel cite chapter 338 of the Acts of 1891, in regard to the oyster interests, is not perceived, as the department was never charged with any burden in respect to these interests.

The defendants argue that the legislature must have intended to repeal all of the laws appropriating the funds of the agricultural department to other objects, because it tried to do so in the three instances named, to-wit, the appropriation to the N. C. Industrial Association, to the N. C. Agricultural College, and to the geological survey; but if by any mishap it has failed to accomplish its purpose, the court is asked to take the will for the deed and to hold that the fertilizer tax law is constitutional. We submit that the legislature must be presumed to have done exactly what it did, nothing more, nothing less; and if there is a single object to which the fertilizer tax is still to be applied, other than the necessary expenses of inspection, it must be conclusively presumed that the legislature intended such application.

If the law authorizes the diversion of a single dollar of the fertilizer tax to purposes foreign to the necessary expenses of inspection, the irresistible conclusion is that a tax has been levied which is not necessary for the purposes of inspection, and therefore that it is an unauthorized interference with interstate commerce.

His honor, Judge Seymour, is mistaken in saying the legislature repealed all laws making any substantial diversion of the money to be derived from the tonnage tax on fertilizers to any other purposes than such as were directly or indirectly connected with the expense of inspection.

His honor falls into another serious error in this connection. He says, on page 28 of the record, "certain appropriations are made in unrepealed sections of the Code of North Carolina from the funds of the state board of agriculture for the various purposes, such as that in section 2196 for the salary of an analyst; under section 2198 to the geological museum and under some other sections to various other purposes, but these appropriations are to be paid out of the general funds of the state board of agriculture which are derived from other sources as well as from the tonnage tax on fertilizers, and are not directly appropriated out of the tonnage tax."

His honor thus admits that *these other sections have not been repealed*, but holds that the appropriations are to be paid out of other funds than those arising from the fertilizer tax. *There is absolutely nothing in the law of North Carolina to warrant this latter statement.* The only source of revenue of the department of agriculture is from the fertilizer tax fund—the tonnage tax. The experiment station has no connection with the agricultural department. (See record, page 36) It is conducted under the auspices of the North Carolina College of Agricultural and Mechanic Arts. This college derives its main support from the treasury of the United States, from funds arising from the sale of public lands. The acts of congress upon this subject were passed July 2, 1862, (12 U. S. Stat. at Large, 503) and August 30, 1890, (25 U. S. Stat. at Large, 417) and require the funds granted by them to each state to be applied to the "endowment, support and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classic studies, *and including military tactics*, to teach such branches of learning as are related to agriculture and the mechanic arts in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

By the first subdivision of section 5, "If the act of July 2, 1862, the purchase and establishment of an experiment farm is authorized."

By the act of March 2, 1887, entitled "An Act to establish agricultural experimental stations in connection with the colleges established in the several states, under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto, state agricultural experiment stations at agricultural colleges were established and an annual appropriation of $15,000 to each State from the sale of public lands, was made to support the same. The object and duty of such experiment stations were defined by the said act to be as follows: "To conduct original researches and verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test their comparative effect on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States, as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective states or territories. (Act of March 2, 1887.) Supplement to U. S. Rev. St., 1874—1891, vol. I, 2nd Ed., p. 550.

None of the funds so furnished by the United States Government are applicable to the support of the agricultural museum, or the World's Fair at Chicago, or any other of the specific objects which are under the charge of the agricultural department by the state law.

H. M. Cowan, on page 39 of the record, testifies that all of the money which was placed to the credit of the agricultural department arose from the fertilizer tax.

Col. John Robinson, commissioner of agriculture, (record, page 69,) testified:

"Q. From what source is the revenue of the department now derived? A. From the tonnage tax on fertilizer.

Q. Has it any other source of revenue? A. None whatever.

Q. What was its source of revenue before the Act of 1891? A. The license tax on fertilizer." (See, also, record, p. 76, bottom of page, and p. 79).

So that the board of agriculture, which accepted the decision of the United States Court in the case of *American Fertilizer Co.* v. *Board of Agriculture* in such good faith, (?) and hastened to

apply to the legislature of North Carolina for an amendment of the law in order to conform it to the letter and the spirit of the adjudication (?) took no steps to relieve the fertilizer tax fund from all these charges, except in three instances, to wit, the $500 appropriation to the North Carolina Industrial Association; the appropriation to the support of the Agricultural and Mechanical College, and the appropriation to the support of the geological survey. On the contrary, the board of agriculture has diligently expended the proceeds of the fertilizer tax in objects totally foreign to inspection, its effort being to find a way to get rid of the money, which was accumulating on its hands.

SECOND. THE AMENDATORY ACT OF 1891 IS UNCONSTITUTIONAL BECAUSE IT LEVIES AN UNNECESSARY TAX, THAT IS PLAINLY IN EXCESS OF THE NECESSARY EXPENSES OF INSPECTION.

The counsel for the defendants contend that it is not competent for the court to inquire into the good faith of the law or to question its declared purpose; that it was impossible to tell the exact amount necessary for expenses of inspection; that it is exclusively the province of congress and not at all that of the court to declare whether a charge or duty, under an inspection law, is or is not excessive.

For this position the counsel invoke Art. I, sec. 10 of the Constitution, and cite *Neilson* v. *Garza*, 2 Woods., 287.

1. This section of the Constitution refers only to foreign imports and exports, and not to merchandise brought from one state to another. *Woodruff* v. *Parker*, 6 Wall., 823; *Pittsburg Coal Co.* v. *Louisiana*, 156 U. S., 590.

2. The case of *Neilson* v. *Garza* is not in point, as it was a decision in reference to a law providing for the inspection of hides imported into this country from Mexico.

3. If the court cannot inquire into the character of the law in question that imposes a tax of 25 cents a ton, what warrant could there be for such inquiry if the law should exact a tax of $25 a ton?

Our conclusion is, that it is proper for the court to inquire into the character of the law, with a view to determine whether the tax is excessive.

THIRD. THE TAX IS EXCESSIVE.

1. It will be observed that this tax of 25 cents a ton is levied without reference to the number of inspections or analyses that

must or may be made. An importation of 10,000 tons of fertilizer, worth from $100,000 to $150,000, must pay a tax of $2,500, *i. e.* a tax of from 2 to 2½ per cent. Of this importation there may be made only a single inspection and a single analysis.

It appears that in the year 1891 there was received by the department of agriculture, from the source of tonnage tax, the sum of $32,972.96. In the year 1892 the traffic in commercial fertilizers was below the average, as is shown by the testimony. (E. B. Barbee, Record, p. 97.) The year 1891 was an average year. (Record, p. 97.) So that we may take $32,972.76 as the average annual income from this tax. How much of it is absolutely necessary for the purposes of inspection?

2. The excessive character of the tax might have been ascertained in the outset by an examination of the fertilizer inspection laws of sister states.

According to the report of the commissioner of agriculture of Virginia, September 30th, 1890 (see Record, page 111), the appropriation made to the department was $10,000, and the fertilizer law produced $8,100. Out of this, the expenses of carrying out the law were first to be paid. This was $3,034.12, leaving $5,065.88, which went into the treasury in part payment of the appropriation of $10,000. By the law of Virginia, a copy of which is printed in the Record at pages 108–109, there are many other duties of the commissioner of agriculture than that of the inspection and analyzation of fertilizers, the expenses of which are to be paid out of the appropriation of $10,000.

It appears that, in 1891, there was expended in Virginia for analytical work the sum of $4,233.29. (See the Record, p. 114.)

By the report of the commissioner of agriculture of 1893, it appears that, by the Georgia laws on this subject, a tax of ten cents a ton only is imposed for the purpose of inspection, which pays the expense and leaves a surplus. (See Record, p. 102, 104.)

3. What are the proper and legitimate and necessary expenses of inspection in North Carolina?

It seems that the experiment station, which is not connected with, or subject to the control of the department of agriculture, but derives its support under an Act of Congress, (see Dr. Battle's testimony, page 95) employs five chemists at an aggregate salary of $6,700 a year, and that these are engaged upon the analyzation of fertilizers about one-third of their time, perhaps a little more, so that the expenses of chemists in the analyzation of fertilizers amounts to about $2,500. (See Dr. Battle's testimony, Record, p. 88–89.) He says that they expend, in addition to this, $600 per annum on chemicals and apparatus, three-fourths of which is used in fertilizers,

say $450; gas, $350; a man, $600 a year; a clerk for heavy season, $20 a month, 6 months, $120; a stenographer, $35 a month, $420 a year; (unnecessary!) one-half of last four items, $745; making $3,595 chargeable to the department of agriculture for the analysis of fertilizers. For this the board of agriculture, in their zeal to get rid of the fertilizer tax on hand, pays annually $8,000. (See Robinson's testimony, p. 78.)

According to the testimony of this witness the expense of inspection (that is of the inspectors) is $2,398.18. All other expenses of the department are unnecessary and not germane to the inspection expenses. His honor, Judge Seymour, on page 25, in making an estimate of the annual expenses, arrives at $17,352; but he says that some of the items which make up this charge, cannot properly be, as a whole, charged to the inspection of fertilizers. The board and committee meetings, $1,452.62; salaries and wages, $2,175, which includes the curator of the museum and other expenses foreign to the subject-matter, should be cut down to about $1,500, which, added to the $3,595, will make a total expense of $5,095.

This is a liberal estimate.

4. A cursory examination of the accounts will show many items that are not at all necessary to the inspection of fertilizers. For example, the *monthly bulletins.*

The plaintiffs deny the propriety of paying out of the fertilizer tax the cost of publishing bulletins. It may be a very proper thing for the state of North Carolina to issue, at its own expense, bulletins informing the farmers of the relative value of the commercial fertilizers to be purchased by them; but it is no part of the expenses of inspection, and should not be made a burden upon the inspection tax. These bulletins constitute a vehicle for the communication of many interesting treatises from the commissioner and others to the farmers of the state upon general agricultural subjects. For example, the August, 1891, bulletin of 12 pages contained only 5 pages with reference to the analyzation of fertilizers. The rest of it was devoted to articles on "Thoroughbred Cows," "State Veterinarian Needed," "The Situation of Farmers," "The Castor Bean," "What it Costs to Grow Cotton," "Farming that Pays," "Articles on Country Roads," and "Diversity Good Economy." (The record, p. 73.) The bulletin of February, 1893, contains 20 pages, only six of which are devoted to the reports of analyses and four to the registration of fertilizers, and ten pages to miscellaneous matter. The registration of fertilizers has nothing to do with the inspection or analysis. The bulletin of March, 1893, of ten pages, contains five pages on the reports of registration of fertilizers and only three pages on the analyzation of fertilizers. The bulle-

tin of April, 1892, contains sixteen pages, only five pages of which are devoted to the analysis of fertilizers. The bulletin of August, 1892, is eighteen pages long, and contains not one upon the subject of the analyzation of fertilizers. It gives an account of the resources of the state. The bulletin of September, 1892, contains only one page devoted to registration and none to the analysis of fertilizers. The bulletin of February, 1892, contains twelve pages, and contains only six pages devoted to the analyzation of fertilizers. The bulletin of April, 1891, contains eight pages, three pages of which are devoted to analyzation and three to registration, and the balance to other matters. The bulletin of June, 1891, contains ten pages, only two pages being devoted to analyzation. The bulletin of July, 1891, contains four pages, with no reference to analyzation. (Record, p. 76.) August, 1891, bulletin contains fourteen pages, with no reference to the analyzation of fertilizers. October, 1891, bulletin, eight pages, none of which are devoted to the analyzation of fertilizers. November, 1891, bulletin contains twelve pages, with no portion devoted to the analyzation of fertilizers. This is taken up with a report of the inter-states exposition of 1891. (See record.)

The total items for *paper* in the two years mentioned, amount to $1,288.31; *printing* amounts to $1,045.23; *blanks* of different kinds amout to $1,205; *legal expenses* amount to $691.85; *postage* account for 1891 and 1892, $951.11; and all these besides the *World's Fair appropriation* of $9,000 and the *salary* of the secretary of the board, while attending World's Fair, $1,300; and World's Fair additional, $300; *curator of museum*, $900 a year; and *insurance* on state buildings, a portion of which are used by the agricultural department, $670.66. (See Record, p. 79.) It is incredible that any portion of these expenditures were necessary in the legitimate inspection of fertilizers.

Besides all this, the extravagant charge for the commissioner and his large board of agriculture is not at all necessary for the simple work inspection and analysis of fertilizers.

Upon a review of the testimony, therefore, it is plain that the levy of twenty-five cents a ton was unreasonable and excessive.

FOURTH. THE COURT MUST MAKE THIS INQUIRY.

It is necessary for the court to make this inquiry, or else in every case, however excessive the amount of the levy made, it must assume that the tax is reasonable, and that it was fixed by the legislature in good faith for the purposes of inspection only. In other words, the court must close its eyes to all evidence *aliunde*, and be bound by the declarations of the state legislature!

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and the presumption that it was enacted in good faith, for the purpose expressed in the title, cannot control the determination of the question whether it is, or is not, repugnant to the Constitution of the United States.

Minnesota *v.* Barber, 136 U. S., 313.

FIFTH. REVIEW OF SOME OF THE AUTHORITIES CITED BY THE DEFENDANTS.

Railroad v. *Gibbs*, 143 U. S., is cited in defendants' brief. In this case it was held that the tax levied upon railroad companies to pay the necessary expenses of a railroad commission was not unconstitutional. But this was an entirely different question from that under consideration. It was not considered in the Gibbs case whether a levy for inspection purposes was an interference with inter-state commerce by reason of its being excessive and unnecessary for the purposes of inspection, nor whether, under the police power of a state, such a tax could be levied.

The case of *Van Meter* v. *Spurrier*, 94 Ky., 22, is cited. In this case for each analysis, a sum of $15 is charged, and $1 per hundred is charged for labels. The court declares that the fees collected by the director for analyzing and fixing a certificate can only be used for that purpose. In this case, however, there are no authorities cited, and besides, it is but a state decision.

The counsel for defendants seem to lay some stress upon the fact that the statute under consideration affects the citizens and manufacturers of North Carolina as well as the citizens of other states. This is not decisive of the point in issue. The drummers' tax law was held unconstitutional, but it applied to citizens of the state as well as drummers from other states.

"Nor can this statute be brought into harmony with the constitution by the circumstance that it purports to apply alike to the citizens of all states, including Virginia, for "a burden imposed by a state upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the states, including the people of the state enacting such statute."

Minn. *v.* Barber, 136 U. S., 313.
Robbins *v.* Shelby Tax District, 120 U. S., 489, 497.
Brimmer *v.* Rebman, 138 U. S., 82.
See, also, in *re.* Spain, 47 Fed. Rep., 208.
Ex parte Houch, 29 Fed. Rep., 330.
Fisklen *v.* Taxing District of Shelby Co., 145 U. S., 1.

Much is said in the brief about the necessity for the protection of the people of North Carolina from fraud and imposition. If the tax were confined to spurious fertilizers, there might be less ground for complaint. An examination of the analyses as published shows that none of the fertilizers analyzed are spurious and nearly all of them contain the valuable ingredients, in quantities as claimed, which go to constitute a commercial fertilizer, and but very few fall under their claims, and these in scarcely an appreciable degree.

The defendants, on page 15 of their brief, seem to admit that the state law can act upon an import only after it has become mingled with the general property of the state, except so far as may be necessary to insure safety in the disposition of the import until it is thus mingled. For example, in order to protect life and property, a state undoubtedly has the right to exercise the necessary authority to require a car of dynamite or gunpowder to be so handled and so deposited as to minimize danger. This, however, is a very different question from that of authority to interfere with the importation of some article of trade, not affecting the health, morals or safety of the community, which, though a genuine article, may turn out to be worth less than claimed. In other words, it can scarcely be contended that the expense of inspection may be saddled upon persons engaged in interstate commerce simply for the purpose of advising purchasers in the state how they may purchase to the greatest advantage and made the best bargains.

The case of *Plumley* v. *Massachusetts*, 155 U. S., 461, is cited. This case may be easily distinguished from the present one. This court upheld a statute of the state of Massachusetts to prevent deception in the manufacture and sale of imitation butter. This statute *forbade the sale of deceitful* imitations of this article of food. But the court in *Plumley* v. *Massachusetts* would hardly have upheld a tax of a cent a pound upon genuine butter as well as oleomargerine for the purpose of paying the expenses of the inspection and detection of the latter. The validity of an inspection law or the excessive character of the inspection tax did not come in question in the case.

SIXTH. THE ACT IN QUESTION CANNOT BE SUSTAINED UNDER THE POLICE POWER OF THE STATE.

The defendants' counsel fail to cite any case to support their contention. The police power cannot be exercised with reference to interstate commerce simply to enable a citizen to make judicious purchases of fertilizers. While there are some expres-

sions in a few of the decisions which seem to indicate that under the police power a state may legislate so as to increase its industries, develope its resources, and add to its wealth and prosperity, they are but *obiter dicta*, and there is no case in which this court has held such laws constitutional unless they were passed for the purpose of promoting the social order, health and morals of its people.

Thus Chancellor Kent mentions "unwholesome trades, slaughter-houses, operations offensive the senses, the deposit of powder and application of steam power to propel cars, the building with combustible materials, and the burial of the dead," as examples of legitimate subjects for state regulation under the police power.

Lewis' Fed. Power over Commerce, 103.

"It is unfortunate that in describing police legislation judges frequently speak, not only of the health and morals but the welfare of society. If "welfare" is a general name for the first two objects then it is a useless repetition; if it is used in its broad sense, "denoting the good of mankind," police laws might in theory cover every act of the legislature. This would destroy the very act of separating the police powers from the mass of legislation reserved to the states, viz., that certain special rules should be applied when we examine the question of their constitutionality. And, we may observe that, notwithstanding the numerous dicta to the effect that the police powers included all those laws passed for the welface of society the actual decisions have never extended the term beyond the public health and public safety. Thus, in *Chy Lung* v. *Freeman et al.*, 92 U. S., 275, a law of the state of California professedly to preserve the health of the citizens, which practically excluded immigrants from China, though undoubtedly for the "welfare" of the state, was declared unconstitutional. And a law which regulated the delivery of telegrams received from or sent to points in other states, though upheld by the courts of Indiana as a police regulation, was declared void by the supreme court of the United States."

Ibid, 103.

"In *Powell* v. *Penna*, 127 U. S, 695, the Court seems to have given a more extended meaning to police legislation. We cannot but think that the dicta in that case will not be sustained. The state had prohibited the manufacture and sale of oleomargarine. Powell was indicted for such sale. It was notorious that this law was passed in the interest of the dairymen, and that oleomargarine properly made was not in the least deleterious to public health. The state's right to prohibit the manufacture is undoubted, but we should not call it the exercise of a police power simply because the legislature has stated its ob-

ject to be the perservation of the health of the community. All drinking on account of the example to others may, perhaps, reasonably be considered as detrimental to the public health, but it illustrates the utmost limit to which we can carry this kind of argument. To call the eating of sound butter, because it does not happen to be made from the milk of a cow, detrimental to the health of the community, is absurd."

Lewis' Fed. Power over Commerce, 104.

"If the intention of the members of the legislature was solely to benefit the health or morals of the community, but the act in its evident operation goes beyond what is absolutely necessary for this end, at the same time deals with matters and things not under the control of the state, it is void."

Ibid, p. 106.

"The three cases of *Bowman* v. *Chicago*, *Leisey* v. *Hardin*, and *in re* Rahrer, have done more to clear the intricate subject of the federal power over commerce and its effect on state action than any other cases ever decided by the supreme court. They put beyond all question the fact that the power over interstate and foreign commerce is exclusively in congress, and that no exception will be made of the police legislation of the states." *Ibid.*, 123.

"Undoubtedly this power of the state extends to all regulations, affecting not only the health but the good order, morals and safety of society; but a law does not necessarily fall under the class of police regulations, because it is passed under the pretense of such regulation, as in this case, by a false title, purporting to protect the health and prevent the adulteration of dairy products and fraud in the sale thereof. It must have in its provisions some relation to the end to be accomplished. If that which is forbidden is not injurious to the health or morals of the people, if it does not disturb their peace or menace their safety, it derives no validity by calling it a police or health law; whatever name it may receive, it is nothing less than an unwarranted interference with the rights and liberties of a citizen."

Powell v. *Penn.*, 127 U. S., 695.

"If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, as is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution."

Mugler *v.* Kansas, 123 U. S., 623, 661.

"The police power extends to such legislation as is required to protect the comfort, health and lives of all persons within the jurisdiction of the state and also to care for the property located within the same. It justifies the adoption of regulations to prevent the commission of crime, and the spreading of disease. It authorizes rules for the suppression of vice and of various kinds of social evils, for the prohibition of lotteries, gambling, and nuisances. Whatever this power may include, I think, it is clear that it does not embrace a subject confided by the constitution exclusively to congress."

R. R. Co. *v.* Husen, 95 U. S., 259.
Crutcher *v.* Kentucky, 141 U. S., 47.

"By the settled doctrines of this court, the police power extends at least to the protection of the lives, the health and property of the community against the injurious exercise by a citizen of his own right."

Patterson *v.* Ky., 97 U. S., 504.

"It extends to the protection of the lives, limbs, comfort and quiet of all persons, and may exclude from introduction into the state contagious and infectious diseases; may make inspection laws, and may exclude or prevent the introduction of criminals, convicts, paupers, idiots, lunatics and others likely to become a burden or public charge, so far as it may be exercised without interfering with the power of congress over the subject of commerce hereinbefore referred to.

Lessey *v.* Hardin, 135 U. S., 100.
O'Neil *v.* Vermont, 144 U. S., 223.
Bowman *v.* Railway Company, 125 U. S., 465.
Butchers' Union Co. *v.* Crescent Co., 111 U. S., 746.
Munn *v.* Illinois, U. S., 113.
Budd *v.* New York, 143 U. S., 517.

Plumby v. *Massachusetts, supra*, is a case where a statute was sustained under the police power of the state, because it was promotive of the *health* of the community. The public were protected against the introduction and sale of a spurious article of food.

SEVENTH. BY FAILURE TO DISCUSS OR REAFFIRM ALL THE POSITIONS TAKEN IN OUR FIRST BRIEF, WE DO NOT WISH TO BE UNDERSTOOD AS ABANDONING ANY OF THEM.

THOS. N. HILL,
JOHN W. HINSDALE,
Solicitors for Complainants and Appellants.

RALEIGH, N. C., May 14th, 1896.

No. 311. Oct. Term, 1895.

Second Reply Brief of Appellant.

Filed May 20, 1896.

SUPREME COURT OF THE UNITED STATES.

No. 311.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS, *et al.*, APPELLEES.

BRIEF IN REPLY

OF

THOS. N. HILL AND JNO. W. HINSDALE,

COUNSEL FOR APPELLANT.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 311.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS *et al.*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

BRIEF IN REPLY OF COUNSEL FOR APPELLANT.

FIRST. THE ACT OF JANUARY 21ST, 1891 (PUBLIC LAWS OF 1891, CH. 9), ENTITLED AN ACT TO AMEND CHAPTER 1, VOLUME 2, OF THE CODE, RELATING TO AGRICULTURE AND GEOLOGY, IS UNCONSTITUTIONAL UPON ITS FACE.

This act must be read in connection with the other statutes *in pari materia*. It undertakes to make certain specific amendments to certain sections in the chapter of The Code relating to agriculture and geology. The presumption is that the legislature did not intend to amend the other sections of the chapter which are not mentioned in the amendatory act, and it would be a strained construction to hold that section 10 of the amendatory act, which provides that all laws and clauses of laws in conflict with this act are hereby repealed, was intended to repeal those sections of the said chapter which were not mentioned. His honor Judge Seymour takes this view. (See record, p. 28.)

It is true the Act of 1891 declares that, "for the purpose of defraying the expenses connected with the inspection of fertilizers and fertilizing materials in this state, there shall be a charge of twenty-five cents per ton;" but the act does not declare that this is the only purpose; and under the uniform construction of the law by the board of agriculture and the

attorney general of the state, the funds arising from this tax have been appropriated to the other purposes authorized by law.

An examination of chapter 1, volume 2 of The Code, will disclose the fact that the board of agriculture is charged with the maintenance and support of the following objects:

1. An analyst, whose duty it shall be not only to analyze fertilizers, but also to carry on experiments on the nutrition and growth of plants and such other investigations as the department may direct. See Vol. II, Code, sec. 2196. He is also to make analyses for purposes connected with the hygienic duties of the superintendent of health. Such analyses shall include soil, drinking water and articles of food. (See Code, sec. 2197.) His salary is expressly made payable out of the funds of the department of agriculture. This section is specially amended by the Act of 1891, and therefore is not repealed by this act.

2. Section 2198 of The Code provides that the state geologist may have all his marls, soils, minerals and other products analyzed by the state chemist at the laboratory of the department free of charge, and the board of agriculture is hereby expressly authorized to pay the necessary expenses of the geological museum, and they may authorize and supervise the publication of the second volume of the Geology of North Carolina. This section is not repealed, but is expressly amended by the Act of 1891. Thus an analyst is to be employed for other purposes than the inspection of fertilizers, and he is to be paid out of the funds of the department of agriculture, which are derived solely from the so-called inspection tax, and these funds are thus diverted from their proper application.

The defendants contend (see brief, page 5,) that the fertilizer tax fund is relieved from the appropriation for the support of the *geological survey*. This is admitted, but it is the only expenditure in this connection of which the board of agriculture has been relieved. Section 2198 has not been repealed or amended in any other respect, and the board of agriculture has accordingly continued to expend the funds arising from the fertilizer tax in the support and maintenance of the geological museum. The curator's salary of $900 per annum (see record, p. 69) is not otherwise provided for.

3. The department of agriculture is directed by section 2199 to prepare hand-books with maps, containing all necessary information in regard to the mines, minerals, forests, etc., and statistics for immigrants, and make illustrative expositions of the attractions of the state whenever practicable at international exhibitions, and to offer premiums for the encouragement of agricultural and mechanical pursuits, and the raising of improved livestock in this state.

This section was left untouched upon the Act of 1891, and the board of agriculture have accordingly, under warrant of this law, and under the advice of the attorney general (printed record, pp. 84, 85, 86) appropriated $9,000 to make an exhibit of North Carolina's resources at the World's Fair at Chicago (record, p. 40); $1,300 to the Secretary, who devoted an entire year to the World's Fair work; and in addition to this the board appropriated $300 more to the same work. (See record, p. 79.) All this came out of the fertilizer tax fund.

Feeling the force of this appropriation, the defendants at first pretended that it was nothing but a loan. (See bill of complaint, p. 17.) But when confronted with the records of the board (record, pp. 81 and 84), they admit it to be an appropriation, and make a weak excuse for having solemnly represented it to be a loan in their sworn answer.

4. Section 2200 authorizes the department to employ immigration agents in foreign countries. There is no provision of law for paying them except out of the fertilizer tax.

5. Section 2201 of The Code provides for establishing and keeping a general land and mining registry at the expense of the department. This has never been repealed.

6. Sec. 2206 provides for the annual appropriation of $500 for the North Carolina Industrial Association. The plaintiff contends that this appropriation has not been repealed. (See former brief, p. 58, where the question of repeal is discussed.)

7. The $5,000 annual appropriation to the N. C. College of Agriculture and Mechanic Arts is still in force. Acts 1885, ch. 308, Acts 1887, ch. 418 (see former brief, p. 58).

For what purpose defendants' counsel cite chapter 338 of the Acts of 1891, in regard to the oyster interests, is not perceived, as the department was never charged with any burden in respect to these interests.

The defendants argue that the legislature must have intended to repeal all of the laws appropriating the funds of the agricultural department to other objects, because it tried to do so in the three instances named, to-wit, the appropriation to the N. C. Industrial Association, to the N. C. Agricultural College, and to the geological survey; but if by any mishap it has failed to accomplish its purpose, the court is asked to take the will for the deed and to hold that the fertilizer tax law is constitutional. We submit that the legislature must be presumed to have done exactly what it did, nothing more, nothing less; and if there is a single object to which the fertilizer tax is still to be applied, other than the necessary expenses of inspection, it must be conclusively presumed that the legislature intended such application.

If the law authorizes the diversion of a single dollar of the fertilizer tax to purposes foreign to the necessary expenses of inspection, the irresistible conclusion is that a tax has been levied which is not necessary for the purposes of inspection, and therefore that it is an unauthorized interference with interstate commerce.

His honor, Judge Seymour, is mistaken in saying the legislature repealed all laws making any substantial diversion of the money to be derived from the tonnage tax on fertilizers to any other purposes than such as were directly or indirectly connected with the expense of inspection.

His honor falls into another serious error in this connection. He says, on page 28 of the record, "certain appropriations are made in unrepealed sections of the Code of North Carolina from the funds of the state board of agriculture for the various purposes, such as that in section 2196 for the salary of an analyst; under section 2198 to the geological museum and under some other sections to various other purposes, but these appropriations are to be paid out of the general funds of the state board of agriculture which are derived from other sources as well as from the tonnage tax on fertilizers, and are not directly appropriated out of the tonnage tax."

His honor thus admits that *these other sections have not been repealed*, but holds that the appropriations are to be paid out of other funds than those arising from the fertilizer tax. *There is absolutely nothing in the law of North Carolina to warrant this latter statement.* The only source of revenue of the department of agriculture is from the fertilizer tax fund—the tonnage tax. The experiment station has no connection with the agricultural department. (See record, page 36.) It is conducted under the auspices of the North Carolina College of Agricultural and Mechanic Arts. This college derives its main support from the treasury of the United States, from funds arising from the sale of public lands. The acts of congress upon this subject were passed July 2, 1862, (12 U. S. Stat. at Large, 503) and August 30, 1890, (25 U. S. Stat. at Large, 417) and require the funds granted by them to each state to be applied to the "endowment, support and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classic studies, *and including military tactics*, to teach such branches of learning as are related to agriculture and the mechanic arts in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

By the first subdivision of section 5, "If the act of July 2, 1862, the purchase and establishment of an experiment farm is authorized."

By the act of March 2, 1887, entitled "An Act to establish agricultural experimental stations in connection with the colleges established in the several states, under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto, state agricultural experiment stations at agricultural colleges were established and an annual appropriation of $15,000 to each State from the sale of public lands, was made to support the same. The object and duty of such experiment stations were defined by the said act to be as follows: "To conduct original researches and verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test their comparative effect on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States, as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective states or territories. (Act of March 2, 1887.) Supplement to U. S. Rev. St., 1874—1891, vol. I, 2nd Ed., p. 550.

None of the funds so furnished by the United States Government are applicable to the support of the agricultural museum, or the World's Fair at Chicago, or any other of the specific objects which are under the charge of the agricultural department by the state law.

H. M. Cowan, on page 39 of the record, testifies that all of the money which was placed to the credit of the agricultural department arose from the fertilizer tax.

Col. John Robinson, commissioner of agriculture, (record, page 69,) testified:

"Q. From what source is the revenue of the department now derived? A. From the tonnage tax on fertilizer.

Q. Has it any other source of revenue? A. None whatever.

Q. What was its source of revenue before the Act of 1891? A. The license tax on fertilizer." (See, also, record, p. 76, bottom of page, and p. 79).

So that the board of agriculture, which accepted the decision of the United States Court in the case of *American Fertilizer Co.* v. *Board of Agriculture* in such good faith, (?) and hastened to

apply to the legislature of North Carolina for an amendment of the law in order to conform it to the letter and the spirit of the adjudication (?) took no steps to relieve the fertilizer tax fund from all these charges, except in three instances, to wit, the $500 appropriation to the North Carolina Industrial Association; the appropriation to the support of the Agricultural and Mechanical College, and the appropriation to the support of the geological survey. On the contrary, the board of agriculture has diligently expended the proceeds of the fertilizer tax in objects totally foreign to inspection, its effort being to find a way to get rid of the money, which was accumulating on its hands.

SECOND. THE AMENDATORY ACT OF 1891 IS UNCONSTITUTIONAL BECAUSE IT LEVIES AN UNNECESSARY TAX, THAT IS PLAINLY IN EXCESS OF THE NECESSARY EXPENSES OF INSPECTION.

The counsel for the defendants contend that it is not competent for the court to inquire into the good faith of the law or to question its declared purpose; that it was impossible to tell the exact amount necessary for expenses of inspection; that it is exclusively the province of congress and not at all that of the court to declare whether a charge or duty, under an inspection law, is or is not excessive.

For this position the counsel invoke Art. I, sec. 10 of the Constitution, and cite *Neilson* v. *Garza*, 2 Woods., 287.

1. This section of the Constitution refers only to foreign imports and exports, and not to merchandise brought from one state to another. *Woodruff* v. *Parker*, 6 Wall., 823; *Pittsburg Coal Co.* v. *Louisiana*, 156 U. S., 590.

2. The case of *Neilson* v. *Garza* is not in point, as it was a decision in reference to a law providing for the inspection of hides imported into this country from Mexico.

3. If the court cannot inquire into the character of the law in question that imposes a tax of 25 cents a ton, what warrant could there be for such inquiry if the law should exact a tax of $25 a ton?

Our conclusion is, that it is proper for the court to inquire into the character of the law, with a view to determine whether the tax is excessive.

THIRD. THE TAX IS EXCESSIVE.

1. It will be observed that this tax of 25 cents a ton is levied without reference to the number of inspections or analyses that

must or may be made. An importation of 10,000 tons of fertilizer, worth from $100,000 to $150,000, must pay a tax of $2,500, *i. e.* a tax of from 2 to 2½ per cent. Of this importation there may be made only a single inspection and a single analysis.

It appears that in the year 1891 there was received by the department of agriculture, from the source of tonnage tax, the sum of $32,972.96. In the year 1892 the traffic in commercial fertilizers was below the average, as is shown by the testimony. (E. B. Barbee, Record, p. 97.) The year 1891 was an average year. (Record, p. 97.) So that we may take $32,972.76 as the average annual income from this tax. How much of it is absolutely necessary for the purposes of inspection?

2. The excessive character of the tax might have been ascertained in the outset by an examination of the fertilizer inspection laws of sister states.

According to the report of the commissioner of agriculture of Virginia, September 30th, 1890 (see Record, page 111), the appropriation made to the department was $10,000, and the fertilizer law produced $8,100. Out of this, the expenses of carrying out the law were first to be paid. This was $3,034.12, leaving $5,065.88, which went into the treasury in part payment of the appropriation of $10,000. By the law of Virginia, a copy of which is printed in the Record at pages 108–109, there are many other duties of the commissioner of agriculture than that of the inspection and analyzation of fertilizers, the expenses of which are to be paid out of the appropriation of $10,000.

It appears that, in 1891, there was expended in Virginia for analytical work the sum of $4,233.29. (See the Record, p. 114.)

By the report of the commissioner of agriculture of 1893, it appears that, by the Georgia laws on this subject, a tax of ten cents a ton only is imposed for the purpose of inspection, which pays the expense and leaves a surplus. (See Record, p. 102, 104.)

3. What are the proper and legitimate and necessary expenses of inspection in North Carolina?

It seems that the experiment station, which is not connected with, or subject to the control of the department of agriculture, but derives its support under an Act of Congress, (see Dr. Battle's testimony, page 95) employs five chemists at an aggregate salary of $6,700 a year, and that these are engaged upon the analyzation of fertilizers about one-third of their time, perhaps a little more, so that the expenses of chemists in the analyzation of fertilizers amounts to about $2,500. (See Dr. Battle's testimony, Record, p. 88–89.) He says that they expend, in addition to this, $600 per annum on chemicalsand apparatus, three-fourths of which is used in the analysis of fertili-

zers, say $450; gas, $350; a man, $600 a year; a clerk for heavy season, $20 a month, 6 months, $120; a stenographer, $35 a month, $420 a year; (unnecessary!) one-half of last four items, $745; making $3,595 chargeable to the department of agriculture for the analysis of fertilizers. For this the board of agriculture, in their zeal to get rid of the fertilizer tax on hand, pays annually $8,000. (See Robinson's testimony, p. 78.)

According to the testimony of this witness the expense of inspection (that is of the inspectors) is $2,398.18. All other expenses of the department are unnecessary and not germane to the inspection expenses. His honor, Judge Seymour, on page 25, in making an estimate of the annual expenses, arrives at $17,352; but he says that some of the items which make up this charge, cannot properly be, as a whole, charged to the inspection of fertilizers. The board and committee meetings, $1,452.62; salaries and wages, $2,175, which includes the curator of the museum and other expenses foreign to the subject-matter, should be cut down to about $1,500, which, added to the $3,595, will make a total expense of $5,095.

This is a liberal estimate.

4. A cursory examination of the accounts will show many items that are not at all necessary to the inspection of fertilizers. For example, the *monthly bulletins.*

The plaintiffs deny the propriety of paying out of the fertilizer tax the cost of publishing bulletins. It may be a very proper thing for the state of North Carolina to issue, at its own expense, bulletins informing the farmers of the relative value of the commercial fertilizers to be purchased by them; but it is no part of the expenses of inspection, and should not be made a burden upon the inspection tax. These bulletins constitute a vehicle for the communication of many interesting treatises from the commissioner and others to the farmers of the state upon general agricultural subjects. For example, the August, 1891, bulletin of 12 pages contained only 5 pages with reference to the analyzation of fertilizers. The rest of it was devoted to articles on "Thoroughbred Cows," "State Veterinarian Needed," "The Situation of Farmers," "The Castor Bean," "What it Costs to Grow Cotton," "Farming that Pays," "Articles on Country Roads," and "Diversity Good Economy." (The record, p. 73.) The bulletin of February, 1893, contains 20 pages, only six of which are devoted to the reports of analyses and four to the registration of fertilizers, and ten pages to miscellaneous matter. The registration of fertilizers has nothing to do with the inspection or analysis. The bulletin of March, 1893, of ten pages, contains five pages on the reports of registration of fertilizers and only three pages on the analyzation of fertilizers. The bulle-

tin of April, 1892, contains sixteen pages, only five pages of which are devoted to the analysis of fertilizers. The bulletin of August, 1892, is eighteen pages long, and contains not one upon the subject of the analyzation of fertilizers. It gives an account of the resources of the state. The bulletin of September, 1892, contains only one page devoted to registration and none to the analysis of fertilizers. The bulletin of February, 1892, contains twelve pages, and contains only six pages devoted to the analyzation of fertilizers. The bulletin of April, 1891, contains eight pages, three pages of which are devoted to analyzation and three to registration, and the balance to other matters. The bulletin of June, 1891, contains ten pages, only two pages being devoted to analyzation. The bulletin of July, 1891, contains four pages, with no reference to analyzation. (Record, p. 76.) August, 1891, bulletin contains fourteen pages, with no reference to the analyzation of fertilizers. October, 1891, bulletin, eight pages, none of which are devoted to the analyzation of fertilizers. November, 1891, bulletin contains twelve pages, with no portion devoted to the analyzation of fertilizers. This is taken up with a report of the inter-states exposition of 1891. (See record.)

The total items for *paper* in the two years mentioned, amount to $1,288.31; *printing* amounts to $1,045.23; *blanks* of different kinds amout to $1,205; *legal expenses* amount to $691.85; *postage* account for 1891 and 1892, $951.11; and all these besides the *World's Fair appropriation* of $9,000 and the *salary* of the secretary of the board, while attending World's Fair, $1,300; and World's Fair additional, $300; *curator of museum*, $900 a year; and *insurance* on state buildings, a portion of which are used by the agricultural department, $670.66. (See Record, p. 79.) It is incredible that any portion of these expenditures were necessary in the legitimate inspection of fertilizers.

Besides all this, the extravagant charge for the commissioner and his large board of agriculture is not at all necessary for the simple work inspection and analysis of fertilizers.

Upon a review of the testimony, therefore, it is plain that the levy of twenty-five cents a ton was unreasonable and excessive.

FOURTH. THE COURT MUST MAKE THIS INQUIRY.

It is necessary for the court to make this inquiry, or else in every case, however excessive the amount of the levy made, it must assume that the tax is reasonable, and that it was fixed by the legislature in good faith for the purposes of inspection only. In other words, the court must close its eyes to all evidence *aliunde*, and be bound by the declarations of the state legislature!

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and the presumption that it was enacted in good faith, for the purpose expressed in the title, cannot control the determination of the question whether it is, or is not, repugnant to the Constitution of the United States.

Minnesota *v.* Barber, 136 U. S., 313.

FIFTH. REVIEW OF SOME OF THE AUTHORITIES CITED BY THE DEFENDANTS.

Railroad v. *Gibbes*, 142 U. S., is cited in defendants' brief. In this case it was held that the tax levied upon railroad companies to pay the necessary expenses of a railroad commission was not unconstitutional. But this was an entirely different question from that under consideration. It was not considered in the Gibbs case whether a levy for inspection purposes was an interference with inter-state commerce by reason of its being excessive and unnecessary for the purposes of inspection, nor whether, under the police power of a state, such a tax could be levied.

The case of *Van Meter* v. *Spurrier*, 94 Ky., 22, is cited. In this case for each analysis, a sum of $15 is charged, and $1 per hundred is charged for labels. The court declares that the fees collected by the director for analyzing and fixing a certificate can only be used for that purpose. In this case, however, there are no authorities cited, and besides, it is but a state decision.

The counsel for defendants seem to lay some stress upon the fact that the statute under consideration affects the citizens and manufacturers of North Carolina as well as the citizens of other states. This is not decisive of the point in issue. The drummers' tax law was held unconstitutional, but it applied to citizens of the state as well as drummers from other states.

"Nor can this statute be brought into harmony with the constitution by the circumstance that it purports to apply alike to the citizens of all states, including Virginia, for "a burden imposed by a state upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the states, including the people of the state enacting such statute."

Minn. *v.* Barber, 136 U. S., 313.
Robbins *v.* Shelby Tax District, 120 U. S., 489, 497.
Brimmer *v.* Rebman, 138 U. S., 82.
See, also, in *re.* Spain, 47 Fed. Rep., 208.
Ex parte Houch, 29 Fed. Rep., 330.
Fisklen *v.* Taxing District of Shelby Co., 145 U. S., 1.

Much is said in the brief about the necessity for the protection of the people of North Carolina from fraud and imposition. If the tax were confined to spurious fertilizers, there might be less ground for complaint. An examination of the analyses as published shows that none of the fertilizers analyzed are spurious and nearly all of them contain the valuable ingredients, in quantities as claimed, which go to constitute a commercial fertilizer, and but very few fall under their claims, and these in scarcely an appreciable degree.

The defendants, on page 15 of their brief, seem to admit that the state law can act upon an import only after it has become mingled with the general property of the state, except so far as may be necessary to insure safety in the disposition of the import until it is thus mingled. For example, in order to protect life and property, a state undoubtedly has the right to exercise the necessary authority to require a car of dynamite or gunpowder to be so handled and so deposited as to minimize danger. This, however, is a very different question from that of authority to interfere with the importation of some article of trade, not affecting the health, morals or safety of the community, which, though a genuine article, may turn out to be worth less than claimed. In other words, it can scarcely be contended that the expense of inspection may be saddled upon persons engaged in interstate commerce simply for the purpose of advising purchasers in the state how they may purchase to the greatest advantage and made the best bargains.

The counsel for the defendants, on page 17 of their brief, say: "In all the cases, so far as we are aware, in which inspection laws of the states have been under consideration by the court, the question has been, not as to whether the inspection charges were excessive, but whether they were a mere cover for laying revenue duties;" and for this they cite:

Soon Hing *v.* Crowley, 113 U. S., 703, at p. 710.
Mugler *v.* Kansas, 123 U. S., 623, at p. 661.
People *v.* Compagnie Generale, etc., 107 U. S., 59 at p. 63.
Minnesota *v.* Barber, 136 U. S., 313, at p. 319.

In the case of *Soon Hing* v. *Crowly*, *supra*, like that of *Barbier* v. *Connolly*, 113 U. S., 27, an ordinance of the municipality of San Francisco recited that the indiscriminate establishment of public laundries and wash-houses endangered the public health and public safety, and made it unlawful to carry on this business within certain designated limits of the city and county, without having first obtained a health certificate of the health officer of the municipality, after an inspection by him without charge for the services rendered, and forbade such business be-

tween the hours of ten in the evening and six in the morning. The court sustained the ordinance, saying on page 708 of the opinion: "It is of the utmost consequence in a city subject, as San Francisco is, the greater part of the year to high winds, and composed principally within the limits designated of wooden buildings, that regulations of a strict character should be adopted to prevent the possibility of fires. That occupations in which continuous fires are necessary should cease at certain hours of the night would seem to be, under such circumstances, a reasonable regulation as a measure of precaution."

No inspection fee of any amount was here exacted.

In *Mugler* v. *Kansas, supra*, the court held that state legislation, which prohibits the manufacture of spirituous, malt, vinous, fermented, or other intoxicating liquors within the limits of the state, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege or immunity secured by the constitution of the United States, or by the amendments thereto; and that the prohibition by the state of Kansas in its constitution and laws of the manufacture or sale within the limits of the state of intoxicating liquors for general use there as a beverage, is fairly adapted to the end of protecting the community against the evils which result from excessive use of ardent spirits, and is not subject to the objection that, under the guise of police regulations, the state is aiming to deprive the citizen of his constitutional rights.

Mr. Justice Harlan, delivering the opinion of the court, said:

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the State. There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of the statute, *Sinking Fund Cases*, 99 U. S., 700, 718, the courts must obey the Constitution rather than the lawmaking department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it is said in *Marbury* v. *Madison*, 1 Cranch, 137, 176, 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the

limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

No inspection tax was levied by the statute under consideration.

In *People* v. *Compagnie Generale Tranatlantique, supra,* this court held that a statute of New York imposing a tax on every alien passenger who shall come by vessel from a foreign country to the port of New York, and holding the vessel liable for the tax, is a regulation of foreign commerce, and is void, and that the statute is not relieved from this constitutional objection by declaring in its title that it is to raise money for the execution of the inspection laws of the state, which authorize passengers to be inspected in order to determine who are criminals, paupers, lunatics, orphans, or infirm persons, without means or capacity to support themselves and subject to become a public charge, as such facts are not to be ascertained by inspection alone.

This Court held that the statute under consideration was not in any sense an inspection law. So the case is not in point.

In *Minnesota* v. *Barber. supra,* it was decided that the statute of Minnesota entitled "An act for the protection of the public health by providing for inspection, before the slaughtering, of cattle, sheep and swine designed for slaughter for human food," is unconstitutional and void in so far as it requires, as a condition of sales in Minnesota of fresh beef, veal, mutton, lamb or pork, for human food, that the animals, from which such meats are taken, shall have been inspected in that state before being slaughtered.

A burden imposed upon inter-state commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the states, including the people of the state enacting it.

There was no inspection fee whatever exacted in this case.

It will be observed that in none of these cases did the court have under consideration whether certain inspection charges were a mere cover for laying revenue duties.

SIXTH. THE ACT IN QUESTION CANNOT BE SUSTAINED UNDER THE POLICE POWER OF THE STATE.

The defendants' counsel fail to cite any case which supports their contention. The police power cannot be exercised with refer-

ence to interstate commerce simply to enable a citizen to make judicious purchases of fertilizers. While there are some expressions in a few of the decisions which seem to indicate that under the police power a state may legislate "so as to increase its industries, develope its resources, and add to its wealth and prosperity," they are but *obiter dicta*, and there is no case in which this court has held such laws constitutional unless they were passed for the purpose of promoting the social order, health and morals of the people.

The counsel cites in support of their position the following cases:

Barbier *v.* Connolly, 113 U. S., 27, 31.
Beer Co. *v.* Massachusetts, 97 U. S., 25.
Leisy *v.* Hardin, 135 U. S., 129.
Morgan *v.* Louisiana, 118 U. S., 435, 464.
Ouachita Packet Co. *v.* Aiken, 121 U. S., 144.
Packet Co. *v.* St. Louis, 100 U. S., 423.
Dent *v.* West Va., 129 U. S., 114, 122.
Plumley *v.* Massachusetts, 155 U. S., 461.
Gibbons *v.* Ogden, 4 Wheat., 1, 203.
Railroad *v.* Husen, 95 U. S., 465.
Voight *v.* Wright, 141 U. S., 62, 66.

An examination of these cases will disclose that none of them are in point.

Barbier v. *Connolly*, 113 U. S., 27, simply decides that a municipal ordinance prohibiting from washing and ironing in public laundries and washhouses within defined territorial limits from ten o'clock at night until six in the morning, is a purely police regulation within the competency of a municipality possessed of the ordinary powers; and that the fourteenth amendment of the Constitution does not impair the police power of a State.

Mr. Justice Field, in delivering the opinion of the court, says: "It may be a necessary measure of precaution in a city composed largely of wooden buildings like San Francisco, that occupations, in which fires are constantly required, should cease after certain hours at night until the following morning. * * * * The specification of the limits within which the business cannot be carried on without the certificates of the health officer and board of fire wardens is merely a designation of the portion of the city in which the precautionary measures against fire and to secure proper drainage must be taken for the public health and safety."

In *Beer Co.* v. *Massachusetts*, 97 U. S., 25, the legislature of Massachusetts passed what is commonly known as the prohib-

itory liquor law, and under this law certain malt liquors belonging to the Boston Beer Company had been seized as it was transporting them to its place of business within the state with intent to sell them in violation of the said law. The court sustained the seizure, upon the ground that as a measure of police regulation, looking to the preservation of public morals, a state law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States.

Leisy v. *Hardin*, 135 U. S., 129, simply decides that a statute of a state prohibiting the sale of any intoxicating liquors, except for pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county court of the state, is, as applied to a sale by the importer, and in the original packages or kegs, unbroken and unopened, of such liquors manufactured in and brought from another state, unconstitutional and void, as repugnant to the clause of the Constitution granting to congress the power to regulate commerce with foreign nations and among the several states.

This case is no authority for the exercise of the police power of a state in respect to an article which does not affect the health, morals, or safety of a community. This is clearly shown by the following extract from the opinion of the court, p. 112:

"If in the present case," said Mr. Justice Mathews, "the law of Iowa operated upon all merchandise sought to be brought from another state into its limits, there could be no doubt that it would be a regulation of commerce among the states," and he concludes that this must be so, though it applied only to one class of articles of a particular kind. The legislation of congress on the subject of interstate commerce by means of railroads, designed to remove trammels upon transportation between different states, and upon the subject of the transportation of passengers and merchandise (Revised Statutes, sections 4252 to 4289, inclusive), including the transportation of nitroglycerine and other similar explosive substances, with the proviso that, as to them, "any state, territory, district, city or town within the United States," should not be prevented by the language used "from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use or consumption therein," is referred to as indicative of the intention of congress that the transportation of commodities between the states shall be free, except where it is positively restricted by congress itself, or by states in particular cases by the express permission of Congress. It is said the law in question was not inspection law, the object of which "is to improve

the quality of articles produced by the labor of a country" to fit them for exportation; or, it may be for domestic use." *Gibbons* v. *Ogden*, 9 Wheat., 1, 203; *Turner* v. *Maryland*, 107 U. S., 38, 55. Nor could be regarded as a regulation of quarantine or a sanitary provision for the purpose of protecting the physical health of a community; nor a law to prevent the introduction into a state of diseases, contagious, infectious, or otherwise. Articles in such a condition as tend to spread disease are not merchantable, are not legitimate subjects of trade and commerce, and the self-protecting power of each state, therefore, may be rightfully exerted against their introduction, and such exercise of power cannot be considered a regulation of commerce prohibited by the Constitution; and the observations of Mr. Justice Catron, in *The License Cases*, 5 How., 504, 599, are quoted to the effect that what does not belong to commerce is within the jurisdiction of the police of the state, but that which does belong to commerce is within the jurisdiction of the United States; that to extend the police power over subjects of commerce would be to make commerce subordinate to that power, and would enable the state to bring within power "any article of consumption that a state might wish to exclude, whether it belonged to that which was drunk, or to food and clothing; and with nearly equal claim to propriety as malt liquors and the products of fruits other than grapes stand on no higher ground than the light wines of this and other countries, excluded, in effect, by the law as it now stands. And it would be only another step to regulate real or supposed extravagance in food and clothing."

Morgan v. *Louisiana*, 118 U. S., 435, decides that the system of quarantine laws, established by statutes of Louisiana, is a rightful exercise of the police power for the protection of health, which is not forbidden by the Constitution of the United States.

The requirement that each vessel passing a quarantine station shall pay a fee fixed by the statute, for examination as to her sanitary condition, and the ports from which she came, is a part of all quarantine systems, and is a compensation for services rendered to the vessel, and is not a tax within the meaning of the Constitution concerning tonnage tax imposed by the states.

The court, in its opinion, at page 464, says:

"For, while it may be a police power in the sense that all provisions for the health, comfort and security of the citizens are police regulations, and an exercise of the police power, it has been said more than once in this court that, even where such powers are so exercised as to come within the domain of federal authority, as defined by the Constitution, the latter must prevail. *Gibbons* v. *Ogden*, 9 Wheat, 1, 210; *Henderson* v.

The Mayor, 92 U. S., 259, 272; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S., 650, 661."

It will hardly be contended that this case is an authority for the exercise for the police power in respect to matters which do not affect the health, morals or safety of the community.

Ouachita Packet Co. v. *Aiken*, 121 U. S., 444, decides that a municipal ordinance of New Orleans, which authorizes the collection of a wharfage rate, to be measured by the tonnage of the vessels which use the wharves, and estimated to be sufficient to light the wharves, and to keep them in repair, and to construct new wharves as required, and which may realize a profit over these expenses, does not conflict with the Constitution of the United States.

The court holds that the exactions of wharfage were substantially expended for the benefit of those using the wharves, and there was no satisfactory proof that the rates were exhorbitant or excessive. The case was held to be within the principle of the former decisions of this court, which affirm the right of a state, in the absence of regulation by congress, to establish, manage and carry on works and improvements of a local character, though necessarily more or less affecting interstate and foreign commerce. The case does not sustain the defendants' contention.

Packet Co. v. *St. Louis*, 100 U. S., 423, decides that "a municipal corporation, owning improved warves and other artificial means, which it maintains at its own cost, for the benefit of those engaged in commerce upon the public navigable waters of the United States, is not prohibited by the Constitution of the United States from charging and collecting from parties using its warves and facilities such reasonable fees as will fairly remunerate it for the use of the property."

This case is not in point.

Dent v. *West Virginia*, 129 U. S., 114. In this case a statute of West Virginia required every practitioner of medicine in the state to obtain a certificate from the state board of health that he is a graduate of a reputable medical college, or that he has practiced medicine in the state continuously for ten years, or that it has been found, upon examination, that he is competent to practice medicine in all its branches. The statute was upheld as a proper exercise of the police power of the state, as a protection to the community affecting the health and life of the persons who might fall into the hands of the physician. The law was intended to procure such skill and learning in the profession of medicine that the community might trust with confidence those receiving a license under the authorities of the state.

The case of *Plumley* v. *Massachusetts*, 155 U. S., 461, is cited. This case may be easily distinguished from the present one. This court upheld a statute of the state of Massachusetts to prevent deception in the manufacture and sale of imitation butter. This statute *forbade the sale of deceitful* imitations of this article of food. But the court in *Plumley* v. *Massachusetts* would hardly have upheld a tax of a cent a pound upon genuine butter as well as oleomargarine for the purpose of paying the expenses of the inspection and detection of the latter. The validity of an inspection law or the excessive character of the inspection tax did not come in question in the case.

This is a case where a statute was sustained under the police power of the state, because it was promotive of the *health* of the community. The public were protected against the introduction and sale of a spurious article of food.

Gibbons v. *Ogden*, 9 Wheat., 1, 203, decides that the acts of the legislature of the state of New York granting to Robert R. Livingston and Robert Fulton the exclusive navigation of all the waters within the jurisdiction of that state with boats moved by fire or steam for a term of years, are repugnant to that clause to the constitution of the United States which authorizes congress to regulate commerce, so far as the said acts prohibit vessels licensed according to the laws of the United States from carrying on the coasting trade, from navigating the said waters by means of fire or steam. This case is not in point.

Railroad v. *Husen*, 95 U. S., 465, decides that the statute of Missouri, which prohibits driving or conveying any Texas, Mexican or Indian cattle into the state between the first day of March and first day of November in each year, is in conflict with the clause of the constitution that ordains: "Congress shall have power to regulate commerce with foreign nations and among the several states, and with the indian tribes.

Such a statute is more than a quarantine regulation, and not a legitimate exercise of police power of the state. That power cannot be exercised over the inter-state transportation of subjects of commerce.

While a state may enact sanitary laws, and, for the purpose of self-protection, establish quarantine and reasonable inspection regulations, and prevent persons and animals having contagious or infectious diseases from entering the state, it cannot, beyond what is absolutely necessary for self-protection, interfere with transportation into or through its territory. Neither the unlimited powers of a state to tax, nor any of its large police powers can be exercised to such an extent as to work a practical as-

sumption of the powers conferred by the constitution upon congress. Since the range of a state's police power comes very near to the field committed by the constitution to congress, it is the duty of courts to guard vigilantly against any needless intrusion.

This case can scarcely be invoked as a warrant for the exercise of the police powers, where public health, safety or morals are not concerned.

Voight v. *Wright*, 141 U. S., 62, decides the act of Virginia, of March, 1867, (now repealed,) as set forth in c. 86, Code of Virginia, ed. 1873, providing that all flour brought into the state and offered for sale therein shall be reviewed, and have the Virginia inspection marked thereon, and imposing a penalty for offering such flour for sale without such review or inspection, is repugnant to the commerce clause of the Constitution, because it is a discriminating law, requiring the inspection of flour brought from other states when it is not required for flour manufactured in Virginia. Of course a discriminating law may be unconstitutional upon that ground alone, but it does not follow that, because it does not discriminate, it is therefore constitutional. *Minnesota* v. *Barber*, 136 U. S., 313.

The following authorities sustain the plaintiff's position upon this point:

The following authorities sustain the plaintiff's position upon this point:

"It is unfortunate that in describing police legislation judges frequently speak, not only of the health and morals but the welfare of society. If "welfare" is a general name for the first two objects then it is a useless repetition; if it is used in its broad sense, "denoting the good of mankind," police laws might in theory cover every act of the legislature. This would destroy the very act of separating the police powers from the mass of legislation reserved to the states, viz., that certain special rules should be applied when we examine the question of their constitutionality. And, we may observe that, notwithstanding the numerous dicta to the effect that the police powers included all those laws passed for the welface of society, the actual decisions have never extended the term beyond the public health and public safety. Thus, in *Chy Lung* v. *Freeman et al.*, 92 U. S., 275, a law of the state of California professedly to preserve the health of the citizens, which practically excluded immigrants from China, though undoubtedly for the "welfare" of the state, was declared unconstitutional. And a law which regulated the delivery of telegrams received from or sent to points in other states, though upheld by the courts of Indiana as a police regulation, was declared void by the supreme court of the United States."

Lewis' Fed. Power over Commerce, 103.

"In *Powell* v. *Penna*, 127 U. S., 695, the court seems to have given a more extended meaning to police legislation. We cannot but think that the dicta in that case will not be sustained. The state had prohibited the manufacture and sale of oleomargarine. Powell was indicted for such sale. It was notorious that this law was passed in the interest of the dairymen, and that oleomargarine properly made was not in the least deleterious to public health. The state's right to prohibit the manufacture is undoubted, but we should not call it the exercise of a police power simply because the legislature has stated its object to be the perservation of the health of the community. All drinking on account of the example to others may, perhaps, reasonably be considered as detrimental to the public health, but it illustrates the utmost limit to which we can carry this kind of argument. To call the eating of sound butter, because it does not happen to be made from the milk of a cow, detrimental to the health of the community, is absurd."

Lewis' Fed. Power over Commerce, 104.

"If the intention of the members of the legislature was solely to benefit the health or morals of the community, but the act in its evident operation goes beyond what is absolutely necessary for this end, at the same time deals with matters and things not under the control of the state, it is void."

Ibid, p. 106.

"The three cases of *Bowman* v. *Chicago*, *Leisy* v. *Hardin*, and *in re* Rahrer, have done more to clear the intricate subject of the federal power over commerce and its effect on state action than any other cases ever decided by the supreme court. They put beyond all question the fact that the power over interstate and foreign commerce is exclusively in congress, and that no exception will be made of the police legislation of the states." *Ibid.*, 123.

"Undoubtedly this power of the state extends to all regulations, affecting not only the health but the good order, morals and safety of society; but a law does not necessarily fall under the class of police regulations, because it is passed under the pretense of such regulation, as in this case, by a false title, purporting to protect the health and prevent the adulteration of dairy products and fraud in the sale thereof. It must have in its provisions some relation to the end to be accomplished. If that which is forbidden is not injurious to the health or morals of the people, if it does not disturb their peace or menace their safety, it derives no validity by calling it a police or health law;

whatever name it may receive, it is nothing less than an unwarranted interference with the rights and liberties of the citizen."

Powell v. *Penn.*, 127 U. S., 695.

"If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, as is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Mugler *v.* Kansas, 123 U. S., 623, 661.

"The police power extends to such legislation as is required to protect the comfort, health and lives of all persons within the jurisdiction of the state and also to care for the property located within the same. It justifies the adoption of regulations to prevent the commission of crime, and the spreading of disease. It authorizes rules for the suppression of vice and of various kinds of social evils, for the prohibition of lotteries, gambling, and nuisances. Whatever this power may include, I think, it is clear that it does not embrace a subject confided by the constitution exclusively to congress."

R. R. Co. *v.* Husen, 95 U. S., 259.
Crutcher *v.* Kentucky, 141 U. S., 47.

"By the settled doctrines of this court, the police power extends at least to the protection of the lives, the health and property of the community against the injurious exercise by a citizen of his own right."

Patterson *v.* Ky., 97 U. S., 504.

"It extends to the protection of the lives, limbs, comfort and quiet of all persons, and may exclude from introduction into the state contagious and infectious diseases; may make inspection laws, and may exclude or prevent the introduction of criminals, convicts, paupers, idiots, lunatics and others likely to become a burden or public charge, so far as it may be exercised without interfering with the power of congress over the subject of commerce hereinbefore referred to.

Leisy *v.* Hardin, 135 U. S., 100.
O'Neil *v.* Vermont, 144 U. S., 223.
Bowman *v.* Railway Company, 125 U. S., 465.
Butchers' Union Co. *v.* Crescent Co., 111 U. S., 746.
Munn *v.* Illinois, U. S., 113.
Budd *v.* New York, 143 U. S., 517.

SEVENTH. THE NON-ACTION OF CONGRESS MEANS THAT INTERSTATE COMMERCE SHALL BE UNTRAMMELED AND IS NO SANCTION OF A STATE LAW TO REGULATE COMMERCE.

"Another established doctrine of this court is, that where the powers of congress to regulate is exclusive the failure of congress to make express regulations indicates its will and the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the states, except in matters of local concern only, as hereinafter mentioned, is repugnant to such freedom." This was held by Mr. Justice Johnson in *Gibbons* v. *Ogden*, 9 Wheat., 1, 222; by Mr. Justice Grier in the *Passenger Cases*, 7 How., 283, 462; and has been affirmed in subsequent cases. *State Freight Tax cases*, 15 Wall., 232, 279; *Welton* v. *Missouri*, 91 U. S., 275, 282; *Railroad Co.* v. *Husen*, 95 U. S., 465, 469; *County of Mobile* v. *Kimball*, 102, 691, 697; *Brown* v. *Houston*, 114 U. S., 622, 631; *Walling* v. *Michigan*, 116 U. S., 446, 455; *Pickard* v. *Pullman Palace Car Co.*, 117 U. S., 34; *Wabash R. Co.* v. *Illinois*, 118 U. S., 557; *Bowman* v. *Railroad Co.*, 125 U. S., 465.

EIGHTH. BY FAILURE TO DISCUSS OR REAFFIRM ALL THE POSITIONS TAKEN IN OUR FIRST BRIEF, WE DO NOT WISH TO BE UNDERSTOOD AS ABANDONING ANY OF THEM.

THOS. N. HILL,
JOHN W. HINSDALE,
Solicitors for Complainants and Appellants.

RALEIGH, N. C., May 14th, 1896.

No. 54.

Sup. Ct. of Hill v. Hinsdale

SUPREME COURT OF THE UNITED STATES.

Filed Mar. 1, 1897

OCTOBER TERM, 1895.

No. ~~699~~. 54

PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS, *et al.*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

Supplemental Brief of Appellant.

The North Carolina statute imposing a tax of twenty-five cents a ton on every ton of fertilizer imported into, or sold in, the state is not upon its face an inspection law. *It does not require the agricultural department to make a single inspection or a single analysis of fertilizer during the whole year.* Whenever the said department chooses to institute condemnation proceedings, (see The Code, § 2192, first brief p. 3), an analysis is provided for, and when there is a condemnation adjudged, "it shall be the duty of the department to have an analysis made," etc. As there are not half a dozen condemnation suits in a year, the few hundred dollars expense involved in the inspection and analyses in these cases will not exhaust the $30,000 to $50,000 annually realized from the tonnage revenue tax.

The only other section of The Code (2196), which provides for the analysis of fertilizers, confines the duties of the chemist to the analysis of such fertilizers and products as may be

required by the department of agriculture. Under this section it is not necessary to make any analysis, unless the department shall require it. The department may not require it at all. The act therefore does not contain the elements of an inspection law, because the duty to inspect should be imperative. This section, too, is part of the original act in which there is no reference whatever to the subject of inspection. When the original act was adopted, the fertilizer tax contained therein was a privilege tax of five hundred dollars, which was declared to be unconstitutional in *Fertilizer Co.* v. *Board of Agriculture*, 43 Fed. Rep., 609. This continued to be the case until the tonnage tax of twenty five cents was substituted by the act of 1891. (Code, section 2190; Acts of 1891, chapter 9, section 1.) Under it, the only prerequisites to a sale are the payment of the twenty-five cents tax and the affixing of the tags.

Acting in strict conformity with the statute, the board of agriculture could collect the fertilizer tax, *without going to the expense of a single inspection or analysis.* If this be so, is it not plain that the tonnage tax law is a revenue measure, and that the declaration in the first sentence of section 2190, that the tax is laid for "the purpose of defraying the expenses connected with the inspection of fertilizers," the only reference to *inspection* in the act, is the shallowest pretence? The real and only purpose of the law is to *collect the tax*, and to exclude from the state all fertilizers, good or bad, which do not submit to the imposition. It is a tax "*for revenue only*," and not "*for protection.*"

The recent decision of this court in the case of *State* v. *McDonald*, where the South Carolina dispensary law was decided to be *not an inspection law*, is in point. (See former brief, p. 54.)

THOS. N. HILL,
JOHN W. HINSDALE,
Solicitors for Complainant and Appellant.

No. 311. 549

Brief of Busbee & Battle for Appellees.

Filed April 25, 1896.

SUPREME COURT OF THE UNITED STATES.

No. ~~620~~. 311.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS *et al.*, APPELLEES.

BRIEF OF

F. H BUSBEE,

R. H. BATTLE,
(Of Battle & Mordecai),
Solicitors for Appellees.

E. M. UZZELL, PRINTER AND BINDER, RALEIGH.

Supreme Court of the United States,

OCTOBER TERM, 1895.

No. 620.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA AND W. R. WILLIAMS *et al.*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

Brief of Counsel for Appellees.

STATEMENT OF THE CASE.

This is a suit in equity, begun on April 1, 1892, by filing the original bill (record, pages 3–11) in the Circuit Court of the United States for the Eastern District of North Carolina. The purpose of the bill is to have the act of the General Assembly of North Carolina, entitled "An act to amend chapter 1, Volume II of The Code of North Carolina, relating to Agriculture and Geology," ratified January 21, 1891, and the laws of which this act was amendatory, adjudged to be unconstitutional and void, and also to enjoin the collection of an inspection charge, or tax, of twenty-five

cents per ton upon commercial fertilizers, which is provided for in that act.

Upon the filing of the bill, duly verified, a restraining order (record, pages 11 and 12) was granted; but upon the coming in of the answer (record, pages 15–19), a motion to continue the injunction, until the hearing, was heard upon bill, answer, affidavits and exhibits, and denied, and the temporary injunction was dissolved (record, page 29).

Proofs were taken and the case was heard at June Term, 1893, of the United States Circuit Court at Raleigh, upon the pleadings, depositions and exhibits. The bill was dismissed, and the plaintiffs appealed to the Supreme Court of the United States (record, page 120).

In the decree dismissing the bill Judge Seymour, presiding, refers to the opinion filed by him upon the motion to continue the injunction, in which the reasons for the decree are given; and the defendants in error desire that that opinion of the learned Judge be taken as a part of their brief. (Judge Seymours' opinion, record, pages 20–29).

The Code of North Carolina contains the entire general public statutes of the State in force in 1883. Volume II, chapter 1. By section 2184, a Department of Agriculture, etc., was established. By section 2190, a privilege, or license, tax of five hundred dollars upon each separate brand or quality of "manipulated guano, superphosphate or other commercial fertilizers, sold, or offered for sale, in the State," was imposed, and the fund arising from such tax (to which were added certain fines and penalties imposed for attempted violation or evasion of the law) was placed under the control of the Board of Agriculture, for certain specific purposes designated in the statute. By a suit in the Circuit Court of the United States for the Eastern District of North Carolina, entitled "*American Fertilizer Company* vs. *The Board of Agriculture et al.*," the constitutionality of that statute was drawn in question. At the

——— Term, 1890, the imposition of this license tax was declared to be in conflict with the Constitution of the United States, and void. See *American Fertilizer Company* vs. *Board of Agriculture*, 43 Federal Reporter, 609.

The Board of Agriculture accepted that decision in good faith, and appealed to the legislative department of North Carolina for an amendment to the law, in order to conform to the letter and spirit of the adjudication of the Court.

In January, 1891, the General Assembly of North Carolina passed "An act to amend chapter 1, Volume II of The Code, relating to Agriculture and Geology." Public Acts 1891, chapter 9, ratified January 21, 1891. The defendants think it is apparent, from the very language of this act, from its declared purpose and also from the accompanying enactments passed by the same Legislature, that it was the intention of the General Assembly to conform, both in letter and spirit, to the decision of the Court construing the former act.

A proper regard to the consideration due the law-making power of a State will strongly incline the Court to favor that construction of its statutes which upholds the good faith of the Legislature, if such be reasonable.

For the statute which had been declared to be in derogation of the Constitution of the United States the law-making power substituted an entirely different method of taxation, and in so doing declared its purpose in plain and unmistakable terms: "For the purpose of defraying the expenses connected with the inspection of fertilizers and fertilizing material in this State there shall be a charge of twenty-five cents per ton on such fertilizers and fertilizing materials for each fiscal year ending November 30th, which shall be paid before delivery to agents," etc. Acts of 1891, chapter 9, section 1.

By section 2 of the act, section 2191 of The Code is amended, by requiring the labels and stamps to be printed upon every package of fertilizers.

By section 4, for section 2193 of The Code is substituted a provision imposing a penalty upon every merchant, agent, etc., for selling fertilizers without the labels, stamps and tags provided by law.

The other sections provide the machinery for carrying the act into effect.

By section 9 a manufacturer of fertilizers, who complies with the statute, is exempt from any other taxes by city, town or county.

Section 10 repeals all laws in conflict with this act.

The Legislature thus declared its purpose to conform to the decision of the United States Court There must be a very obvious perversion of its constitutional power before the judicial department will declare the declaration of its purpose was fraudulent, and that the statute is void. This in no respect resembles the class of statutes in which under a transparent declaration of an intention to inspect, there is a patent attempt to interfere with the freedom of interstate commerce, as has been done in certain of the statutory regulations concerning the sale of dressed meats.

The amount of the tax thus assessed upon fertilizers, as a means of providing for their proper inspection and analysis, if compared with the tax assessed upon other property in the State upon the *ad valorem* principle, cannot justly be claimed to be exorbitant, nor does this view seem to be pressed by counsel for appellants. The main objection of the complainants seems to be that the whole amount of the tax is not necessary for the inspection of fertilizers, and that when collected it is largely applied to other purposes than inspection, and that its collection is an unauthorized regulation of interstate commerce. In other words, the complainant, throwing down the gauntlet to the State of North Carolina, challenges her good faith and declares that the Legislature has falsely stated the purpose of the act.

It is respectfully submitted that the object of the law, as

contained in the act itself, is constitutional and commendable. And the reasonable and proper inference is, that, by the repealing clause in section 10, it was the purpose of the Legislature to repeal all antecedent laws by which the proceeds of this tax were applied to other purposes than the inspection and analyses of fertilizers, and the maintenance of the proper officers and machinery for that purpose. This not only appears from the language of the statute itself, but is clearly shown by the general course of legislation during the session of 1891. The same General Assembly which passed this statute made express provisions for the support and maintenance of the more important institutions and objects which had theretofore been provided for, either in whole or in part, out of the moneys raised by the license tax upon the brands of fertilizers.

1. The five hundred dollars appropriated to the North Carolina Industrial Association was made payable out of the general fund of the State—Acts 1891, chapter 426. (We will note hereafter the contention of complainants that an old appropriation to this institution was revived by the repealing clause in section 10).

2. Acts of 1891, chapter 348, section 2, repeals the appropriation from this fund to the support of the Agricultural and Mechanical College, and makes other provision for the maintenance of that institution.

3. By Acts of 1891, chapter 417, the fund is relieved from the appropriation to the support of the Geological Survey and the publication of its reports, and ten thousand dollars is appropriated from the public treasury for that purpose.

4. The oyster interests, which had been connected with the Department of Agriculture, and the expenses of which had been defrayed from a fund to which the fertilizers contributed, by Acts of 1891, chapter 338, are provided for entirely from other sources.

A minute inspection of the statutes by the counsel of the appellants has brought to light no appropriation,

of the funds realized from the inspection tax upon fertilizers, made during or since the Act of 1891, or since the decision in *American Fertilizer Company* vs. *The Board of Agriculture.*

The contention of complainants is that, under the technical rules of the ancient law, the repeal of a recent act, making appropriations for purposes not in accordance with the decision of the Court upon the tax formerly imposed, amounts to a re-enactment of former statutes providing for these appropriations, which were similar to but not identical with the statutes that were repealed.

It is well enough to say, at the outset, that it is apparent that if any of the appropriations in force in 1891, payable out of the former tax received from the five-hundred-dollar license upon every brand of fertilizer, were not repealed, it was unintentional upon the part of the law-making power. It was the clear intention of the General Assembly, as is shown by the course of legislation, to repeal every act making an appropriation out of the fund realized from fertilizers, for any other purpose than for the legitimate inspection of fertilizers.

These laws had been declared unconstitutional, at least so far as the fertilizer fund was affected, and a tax to raise a fund partly for this purpose had been declared unconstitutional and void.

Can it be said that, if any law making such appropriation prior to the Act of 1891 escaped the scrutiny of the Legislature, by the force of such antecedent statute a failure to enact such repeal should be considered as rendering unconstitutional, not the law making the appropriation, but the act which declares the actual and only object in imposing an inspection charge of twenty-five cents per ton upon fertilizers, a purpose to defray the actual expenses of ther inspection and analysis?

It can hardly be successfully denied that there is no

article entering into common use in North Carolina, an inspection of which is so absolutely necessary for the protection of the citizens of the State engaged in agricultural operations, as commercial fertilizers. By a reckless course of husbandry, begun almost when the soil of the State was trodden by the feet of the first settlers, the elements of fertility in the virgin soil have been greatly exhausted. The uniform course was to clear the land, cultivate it year after year by exhaustive methods, and with slight return by fertilizing materials, and when it became unable to make satisfactory return, to abandon it as worthless, and make new clearings. So largely was this the case prior to 1861 that there were large movements of planters and slaves from North Carolina to the newer territory and richer alluvial soil of Alabama, Mississippi, Louisiana and the South-western States.

Immediately upon the close of the civil war the cultivation of cotton was greatly stimulated by the high prices obtainable, and the necessity for the use of commercial fertilizers was at once recognized. And the same is true of the increased demand for the finer grades of tobacco. The discovery of the phosphate rock in South Carolina gave a stimulus to the manufacturers, and the demands of the planters grew with successive years. The farmers of the State, so far as regards the quality of the material, were at the mercy of the manufacturers. The amount of ammonia, or nitrogen, phosphoric acid and potash, the three ingredients which make up the larger part of the value of commercial fertilizers, cannot be ascertained without the aid of skilled chemists, nor could it be ascertained whether the fertilizer furnished was of a uniform grade. The only test was the test of the soil, and that would take nine months to determine, and was liable to be affected by unfavorable seasons. The solubility of the phosphoric acid was of the greatest importance in the production of

the crop. It required the trained skill of an expert to determine the relative amounts and values of these fertilizing materials. The average farmer depended alone upon his sense of smell, and his success or failure in a previous year with a brand with the same name. The State was overrun with the agents of the competing manufacturers, whose lurid advertisements and magnificent promises were in inverse ratio to the values of the article they represented. It became imperatively necessary for the protection of our agricultural interests, which already bore the burden of much onerous indirect taxation, to be protected against the spurious and low grade fertilizers which were crowding the markets of the State. It seemed but just that the General Assembly should impose the actual cost of the inspection of these fertilizers upon the articles themselves. To do this required a responsible department in charge of the subject, a staff of agents who would select samples, not from those furnished by the manufacturers, but from the article actually on sale in the various counties of the State. To do this effectively many samples of each brand or grade must be taken, and from widely divergent localities. Samples must be taken in the late winter and early spring, destined to be used upon cotton and tobacco, vegetables, potatoes, and the various crops planted in the spring, and also in the autumn for small grain, cabbage and other winter crops.

An efficient corps of chemists and analysts must be provided and maintained, and this force must be kept together, and must be capable of performing a large part of the work in the limited season which intervenes between the shipment of the fertilizer to the State and its use upon the soil. It is of the greatest importance that the analyses shall be furnished in time to be of service to the planter in his selection of brands for the current season. Particularly is it necessary that this force shall be large, alert and efficient, in order that the manufacturer himself may despair

of being able to throw upon the farming community an inferior article, or one which did not correspond to the analyses printed upon the package.

What other protection could be given to the farming interests, upon the healthy condition of which so large a part of the prosperity, yea, almost the existence of the State depends?

It is necessary, therefore, that a charge for inspection should be made, which shall be certainly sufficient to insure the careful and thorough inspection of the fertilizers offered. No human ingenuity can estimate the exact amount of a charge which shall raise year by year a sum which should exactly balance the necessary expenses of the fertilizer station. The use of fertilizers varies very greatly with the agricultural condition of the year. If there be a small crop and an enhanced price for the previous year, we may naturally expect a much larger acreage, a more abundant use of fertilizers and increased labor force for the succeeding year. The amount realized from the tax in such a year will probably be in excess of the actual amount required. The very next year, the larger crop having had the inevitable result of causing a fall of prices and a general agricultural depression, the use of fertilizers is greatly deminished, and the amount of the tax is reduced in proportion. This tax, therefore, must be regulated by the law-making power, acting under their oaths to uphold the Constitution of the United States, and obliged therefore to diminish or increase the tax from time to time in their biennial sessions, if the amount shall be materially in excess or below the requirements for a proper inspection and analysis.

To the contention of the plaintiff, therefore, that a large part of the money raised by this inspection or license tax is not devoted to nor necessary for inspection, the reply is, that in reference to the application of the fund the larger

part is devoted to the maintenance of the Department charged with the actual work of inspection, and that such work, the collection of the samples, the analysis of the samples and the prompt publication and distribution, to those interested of the results of the analyses, were the principle functions and duties of the Department. If the machinery provided for this purpose is made to appear to the critical eye of the interested manufacturer as somewhat expensive, the answer is, that this is a matter vested in the discretion of the law-making power of the State. The object is most important to the agricultural interests of North Carolina, and the character of the substance to be analyzed, and the number of persons necessary for this work, as set forth above, and the prompt publication of the results and the distribution of bulletins to every post-office in North Carolina, all require a considerable expenditure. Without efficient protection under the supervision of a Board of Agriculture for the detection and exposure of spurious fertilizers the principal interest of the State would be in grave danger.

The reply to the second charge, that the moneys thus raised by the imposition of a charge of twenty-five cents per ton is not necessary for the purposes of inspection, is that it is impossible to determine in advance for any given year whether this is or is not a fact. The pleadings and evidence show, that the revenue derived from this tax is much less than the revenue derived from the privilege tax of five hundred dollars for each brand of fertilizers, and that the receipts are diminishing. During the fiscal year ending November 30, 1891, $32,972.96 was raised; for the year ending November 30, 1892, $26,044.53 (see evidence of H. M. Cowan, Chief Clerk to the Treasurer, record, p. 33). As the former tax of five hundred dollars on each brand had the natural effect of keeping out of the State many brands of fertilizers, so the change to a charge of twenty-five cents

on each ton had the immediate effect of bringing many manufacturers into the State, and resulted in a large increase in the number of brands and in the consequent expenses of their analysis.

The evidence of the Commissioner of Agriculture (record, page 71), is that before the change there were seventy-eight or eighty brands used in the State, and that the number had increased under the operation of the Act of 1891 to more than four hundred and twenty-five, and that the number of brands was increasing every year. This increase, of course, renders necessary greater vigilance on the part of those charged with taking samples for inspection, and an increase in the number of inspectors and of analytical chemists required. The vendors of fertilizers send their goods into the State by railway and water-ways entering the State in very many different directions, and the inspectors, to prevent imposition upon the farmers, must visit nearly every one of the ninety-six counties in which the State is divided—perhaps every one—to take samples for inspection.

Dr. H. B. Battle, the Director of the Experimental Station, or State Chemist, deposes (record, 89 and 90) that about five hundred and twenty-five analyses of fertilizers were made during the year 1892, and that a fair estimate of their cost was twenty dollars each. This involves an expenditure of ten thousand five hundred dollars alone for analyses. The evidence of R. L. Burkhead, Clerk of the Treasurer (record, pages 37–39), shows that eight thousand dollars per annum for 1891 and 1892 was paid by the Agricultural Experiment Station for this work, and, taken in connection with the evidence of the chemist, it is shown that this is not sufficient to pay the costs. The salaries of the inspectors amount to $2,700 (Robinson's evidence, pages 70 and 71); the price of tags (1,300,000, at $1.25 per thousand) amounts to fifteen hundred dollars (record,

page 72). When, to this are added express charges upon the fertilizer and the necessary miscellaneous expenses of the Department, such as servants' hire, travelling expenses of the inspectors, the legal expenses (which have been largely increased by the action of manufacturers), the salaries of the Commissioner and the Secretary, or a fair proportion thereof, most of their duties being directly connected with the inspection of fertilizers, there would be very little surplus left of the $26,000 collected by this tonnage tax. Certainly the Legislature cannot say, in advance, that all of the fund from that source may not be required to meet the expenses of inspection. Attention is invited to the tabulated statement of the expenses of the Department in Judge Seymour's opinion (record, page 25), and his comments thereon. The table covers only half the year 1892.

Some latitude must be allowed in respect to the expenditures which are made in carrying out such a law.

In the recent case of *Charlotte, etc., Railroad* vs. *Gibbes*, 143 U. S., 386, it was held by this Court that the tax levied upon railroad companies in order to defray the necessary expenses of a railway commission, including a salary of two thousand dollars each to three commissioners, was not unconstitutional.

We are not without direct authority from the State Courts, about the validity of similar legislation.

The identical question now before this court has been passed upon by the Court of Appeals of Kentucky, in *Van Meter* vs. *Spurrier*, 94 Ky., 22.

By a statute of Kentucky, approved April 13, 1886, entitled "An act to regulate the sale of fertilizers in this Commonwealth, and to protect agriculturists in the purchase and use of the same," it is provided that on or before the first day of May in each year, before any person or company shall offer for sale in Kentucky any fertilizer whose retail price is more than ten dollars per ton, such person or

company shall furnish to the Director of the Agricultural Experiment Station not less than one pound of such fertilizer, accompanied by an affidavit that it is a true sample of a commercial fertilizer, etc. It is made the duty of the Director to cause a chemical analysis of each sample to be made, and to set forth the result of the analysis in the form of a label. A violation of this act is made a misdemeanor, and for analyzing and affixing the certificate the sum of fifteen dollars is charged, and one dollar per hundred is charged for the labels. As the usual package of fertilizer is two hundred pounds, this makes a tonnage tax of ten cents per ton in addition to the charge of fifteen dollars for analysis.

Section 6 requires the Director to pay all such fees into the treasury of the Agricultural and Mechanical College of Kentucky, to be used "in meeting the legitimate expenses of the Station in making analyses of fertilizers in experimental tests of the same and in such other experimental work and purchases as shall enure to the benefit of the farmers of this Commonwealth."

The Court says: "The statute cannot be fairly constructed to authorize, in the language of counsel, a levy of an import on interstate commerce beyond what is necessary to insure inspection; nor is the language of section 6 susceptible of the meaning counsel gives it. The statute, as its title indicates, was enacted for the protection of farmers of this Commonwealth against fraud and imposition of those having for sale commercial fertilizers. To accomplish that object, each one selling, or offering to sell, any fertilizer, is required to submit a sample for analysis, and test of its quality, at the experimental station. For that purpose only can the fees collected by the Director be used, and in that way, and to that extent only, can farmers of the Commonwealth be benefited by the statute. In our opinion the law is valid in every respect."

It may be well enough here to make a general answer to the quotations made from the various cases cited in the appellant's brief arising out of statutes passed in the different States which provide for the inspection of dressed meats, flour and other articles:

Welton vs. *Missouri*, 91 U. S., 346.
R. R. vs. *Husten*, 95 U. S., 465.
Brimmer vs. *Rebman*, 136 U. S., 78.
Minnesota vs. *Barber*,136 U. S., 313.
Voight vs. *Wright*, 141 U. S., 62.

Of these cases it is enough for our present purpose to say, that in each instance it was apparent from the statute itself, that either it was the *object* of the law-making power to prohibit (or to lay such a tax as would amount to a prohibition of) the importation into the State of dressed meats, flour or other products of an adjoining State; or if such were not the object of the law-making power the certain *effect* of the operation of the statute would amount to such prohibition. In no instance did these statutes, improperly termed inspection laws, in their actual operation injuriously affect the products of the State passing the statute.

Some of the statutes contain provisions which are manifestly meant to prohibit the use of dressed meats in competition with the meats butchered in the home market, and this by the method of requiring an inspection of the meat within a few hours after it was butchered, etc.

The original package cases, such as *Bowman* vs. *C. & C. Railroad*, 125 U. S., 465; *Leisey* vs. *Hardin*, 135 U. S., 100, are declared not to be inspection laws.

It is needless to examine these cases in detail or to point out the distinction between them and the case at bar. None of the extracts cited in the brief of the appellant's counsel militate against the construction contended for by

the appellees. The statute under consideration bears as strongly upon the citizens and manufacturers of North Carolina as upon the citizens of other States. Neither in its terms nor in its effects does it prohibit the importation or manufacture of fertilizers. The tax imposed is expended to enhance the mercantile value of the honestly made article.

The object of the inspection laws must necessarily vary according to the character of the object inspected and the purport of the law.

It is true that in many instances inspection laws are passed "to prevent the introduction into the State of something which will endanger the health or life of the people." *New York* vs. *Miln*, 11 Peters, 102. It is also admitted that, as stated in *Gibbons* vs. *Ogden*, 9 Wheat, 1, "the object of an inspection law is to improve the quality of articles produced by the labor of a country, to fit them for exportation, or it may be for domestic use."

But nowhere has it ever been contended that this was the *only* object of an inspection law. In respect to fertilizers, great care and considerable expense are necessary to determine that they are fit for the use which they are offered. No one but a skilled analyst can tell this, except by actual test in the field, and in such test the fertilizers are necessarily destroyed.

A State law can act upon an import only after it has become mingled with the general property of the State, except so far as it may be necessary to ensure safety in the disposition of the import until it is thus mingled.

Bowman vs. *Chicago, etc., Railroad.*
Leisey vs. *Hardin*, above cited.

Inspection laws affecting many different articles of use in commerce (in none of which is the effect so hidden and uncertain as fertilizers) have been in force in North Caro-

lina for more than one hundred years. Some of them since 1777, twelve years before the Constitution of the United States went into effect. The Code of North Carolina, Volume II, chapter 28, sections 2982 to 3061.

The existence of such laws in Maryland before the adoption of the Constitution is mentioned by the Court in *Turner* vs. *Maryland*, 107 U. S., 38, as an argument for the constitutionality of the amendatory act then in question.

The Constitution distinctly recognizes the existence and necessity of inspection laws by the States, and that they may extend to imported articles as well as those of domestic production.

Article 1, section 10, clause 2 reads: "No State shall, without the consent of Congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for *executing its inspection laws;* and the net produce of all duties and imposts, laid by the State on imports or exports, shall be for the use of the United States; and all such laws shall be subject to the revision and control of Congress."

While such imposts are limited to such as "may be absolutely necessary for executing its (the State's) inspection laws," the impracticability of framing a law which would provide for exactly the amount needed for inspection, and *no more*, is directly recognized, because the clause quoted goes on to provide that the excess, "the net produce," shall be for the use of the treasury of the United States.

It may well be contended that, when on the face of a law, nominally for inspection, it does not plainly appear that it was intended for other and different purposes, the courts have no right to interfere, but that the matter should be committed to the law-making power of the general government, as that clause of the Constitution says, "all such laws shall be subject to the revision and control of the Congress."

While the terms "imports" and "exports" in the Constitution apply only to articles imported from foreign countries or exported to them, as was held in *Woodruff* vs. *Parham*, 8 Wal., 823, and *Pittsburg, etc., Coal Company* vs. *Louisiana*, 156 U. S., 590, and the inhibition of the imposing duties on them, by the States, applies only to such articles, the recognition of the right of the State to protect its citizens and others by inspection laws, in a clause limiting the power of the States in reference to international commerce, is the more significant.

As to the right of the courts to interfere at all, this Court uses this language in *Turner* vs. *Maryland*, above cited, Justice Blatchford delivering the opinion:

"As is suggested in *Neilson* vs. *Garza*, 2 Wood, 287, by Mr. Justice Bradley, it may be doubtful whether it is not exclusively the province of Congress, and not at all of a court, to decide whether a charge, or duty, under an inspection law is not excessive. 107 U. S., page 55.

In all the cases, so far as we are aware, in which inspection laws of the States have been under consideration by the Court, the question has been, not as to whether the inspection charges were *excessive*, but whether they were a mere cover for laying revenue duties.

See *Soon Hing* vs. *Crowley*, 113 U. S., 703, at page 710.
Mugler vs. *Kansas*, 123 U. S., 623, at page 661.
People vs. *Compagnie Generale, etc.*, 107 U. S., 59 (63).
Minnesota vs. *Barber*, 136 U. S., 313, at page 319.

In the determination of the matter in the Court below his Honor did not think it necessary to discuss the question whether the law under consideration was an exercise of one of the police powers of the State. Without elaborating the point we cite some of the decisions which by analogy seem to show that the statute can be sustained as an exercise of such power.

In *Barbier* vs. *Connally*, 113 U. S., 27, at page 31, it is said that the Constitution of the United States "does not interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develope its resources and add to its wealth and prosperity."

A State's police power extends to the protection of the lives, health and property of its citizens. *Beer Company* vs. *Massachusetts*, 97 U. S., 25; *Leisey* vs. *Hardin*, 135 U. S., 129; *Morgan* vs. *Louisiana*, 118 U. S., 435 (464).

The various decisions sustaining the Quarantine, Wharfage and Pilotage laws are in accordance with this decision.

In *Morgan* vs. *Louisiana*, *supra*, the Court says:

"Quarantine laws belong to that class of State legislation which, whether passed with intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of Congress." 118 U. S., at page 465.

In *Ouachita Packet Co.* vs. *Aiken*, relied on by Judge Seymour (record, page 23), it is held that a municipal tax, which authorizes the collection of a wharfage rate, to be measured by tonnage estimated to be sufficient to light the wharves, keep them in repair, and construct new wharves when required, and which may realize a profit over expenses, does not violate the Constitution as being a burden on commerce. 121 U. S., 444.

And the like doctrine is held in *Packet Co.* vs. *St. Louis*, 100 U. S., 423.

While the charge of twenty-five cents per ton is alluded to in the evidence and in Judge Seymour's opinion as a "tonnage tax," it is not meant the duty of "tonnage" which the States are forbidden to impose by clause 3, section 10, Article I of the Constitution. As the term is there used it has reference only to vessels and their car-

goes. Nor is the alleged unconstitutionality of the charge put upon that ground by the bill, or in the assignment of errors in the decree of the Court below.

"The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulation as, in its judgment, will secure, or tend to secure, them against the consequences of ignorance and incapacity as well as deception and fraud."

This is the language of this Court in *Dent* vs. *West Virginia*, 129 U. S., 114 (122), and the principle thus enunciated is of general application. As deception and fraud are so easily practiced in the manufacture and sale of commercial fertilizers, the regulations in respect to them, by the existing law of North Carolina, and the small charge to defray the expenses of their enforcement seem to us eminently reasonable. And we need hardly call to our aid the general principle observed by the courts, that every statute is presumed to be constitutional, and that the courts ought not to decree one to be unconstitutional unless it is clearly so; and if there is a doubt the expressed will of the Legislature should be sustained.

Munn vs. *Illinois*, 94 U. S., 113 (123).

But, in the very recent case of *Plumley* vs. *Massahusetts*, 155 U. S., 461, we think this Court goes the full length of all we contend for here. In that case it was held, that the statute of Massachusetts of March 10, 1891, chapter 58, "to prevent deception in the manufacture and sale of imitation butter," in its application to the sales of oleomargarine artificially colored, so as to make it look like yellow butter, and brought into Massachusetts, is not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the States; and that *Leisey* vs. *Hardin*, 135 U. S., 100, does not justify the contention, that a State is powerless to pre-

vent the sale of articles of food manufactured in or brought from another State, and subjects of traffic or commerce, if their sale may cheat the people into purchasing something they do not intend to buy, and which is wholly different from what its condition and appearance import—to follow the language of the head notes. And at page 479 the Court, after reviewing cases relied upon by appellants and others, proceeds to say: "A State enactment forbidding the sale of deceitful imitations of articles of food, in general use among the people, does not abridge any privilege secured to citizens of the United States, nor, in any just sense, interfere with the freedom of commerce among the several States. It is legislation which 'can be most advantageously exercised by the States themselves.' *Gibbons* vs. *Ogden*, 9 Wheat, 1, 203."

"We are not unmindful of the fact—indeed this Court has often had occasion to observe, that the acknowledged power of the States to protect the morals, the health and safety of their people by appropriate legislation, sometimes touches, in the exercise, the line separating the respective domains of National and State authority. But in view of the complex system of government which exists in this country, 'promoting' as this Court, speaking by Chief Justice Marshall, has said, 'the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous State governments, which retain and exercise all powers not delegated to the Union,' the judiciary of the United States should not strike down a legislative enactment of a State, especially if it has just connection with the social order, the health and the morals of its people, unless such legislation plainly and palpably violates some right granted or secured by the National Constitution, or encroaches upon the authority delegated to the United States for the attainment of objects of national concern."

If a State can constitutionally enact laws, having relation to interstate commerce, for the promotion of *social order*, the *health* and the *morals* of its people, *surely* it can pass a law, whether for inspection or as a police regulation, to protect its people from imposition upon them of worthless fertilizers, the ignorant use of which may result in their financial ruin and the impoverishment of the State itself, a law designed for "the protection of persons and *property* against the noxious acts of others," to quote the language of the Court in

R. R. vs. *Van Husen*, 95 U. S., 465.

As the statute of North Carolina, in question, provides for the inspection of all commercial fertilizers found in the State, whether of home manufacture or otherwise, it is not liable to the objection that it is unconstitutional, as discriminating against those imported from other States, as in

Voight vs. *Wright*, 141 U. S., 62, 66.

Taking the *assignments of error*, *seriatim*, we think it has been shown: *First.* That the act of Januaray 21, 1891, is not violative of the Constitution of the United States, as set forth in the assignments of error *one* and *two*.

Second. That his Honor was justified in holding that the law imposing a charge, or tax, of twenty-five cents per ton upon fertilizers, was an *inspection law*, as it was declared upon its face to be; and therefore there is no basis for assignment of error number *three*.

Third. In reference to the *fourth* assignment of error, we say that by the statutes of the State, as amended, other moneys are raised for the Department, by fines, penalties and registration fees for the remaining expenses of the Board of Agriculture which were not connected with the inspection, and it does not appear, in view of the decrease of the fund and the multiplication of the brands, whereby

the expense of inspection is increased, that there will be an excess of revenue above that which is required for inspection only.

By the simple expedient of omitting all reference to the laws which have repealed or modified the provisions of The Code, the appellant has attempted to make it appear that the appropriations for the North Carolina College of Agriculture and Mechanic Arts, for the North Carolina Industrial Association, and for the expenses of the Geological Survey, are charged upon the fund raised by the fertilizer tax. All these statutes have been repealed. The contention that the former statutes making appropriations to the same objects of like amount were repealed by an express statute repealing the law in force in 1891, and providing for the payment of the same amount from other sources, seems to carry its own refutation with it. It nowhere appears, or by any reasonable intendment can be made to appear, that the Legislature intended, by the various acts already alluded to, during the session of 1891, to re-enact the former legislation making appropriations, when in the very act of the repeal they provide for the payment of the same sum out of the general funds of the State. The argument in Judge Seymour's opinion on this point (pp. 27 and 28 of the record) is conclusive.

Fourth. It does not appear that the Court refused to consider the evidence introduced to show that the money raised by the tax was in excess of what was required for inspection, as stated in assignment *six*, and on the evidence of *the plaintiff* the Court could not hold that the tax was much in excess of what was necessary for that purpose, as set forth in assignment *five*.

Fifth. There is a fallacy in the estimate of the expenses for inspection set forth in assignments *seven*, *eight* and *nine*. It consists in confining the expenses to the charge for analyses alone, whereas the salaries and expenses of the

inspectors and other officers charged with the duty of inspection, and of all the machinery adopted to prevent the imposition of spurious or worthless fertilizers on the people is properly chargeable to the fund raised by this charge or tax.

Sixth. The remaining assignments, *ten* to *fourteen*, are but statements in another form of the errors alleged in the assignments already considered, and we think they have been disposed of by what we have already said.

Our conclusion is, that some such legislation and machinery as have been adopted by the State of North Carolina were absolutely necessary to protect her people from fraud and imposition in their vital interest, to-wit, the successful cultivation of its soil, in raising its staple products of cotton, tobacco and grain, and that the plaintiff has failed to show, that the very moderate tax of twenty-five cents per ton on fertilizers will certainly produce a revenue more than sufficient, in view of the considerations suggested, for purposes of inspection. Should it prove to be greater than is required it is fair to presume that the Legislature will reduce the charge; and that upon the pleadings and evidence the Court below did not err in holding that the legislation is not *colorably* for *inspection*, but really for other purposes.

F. H. BUSBEE,
R. H. BATTLE,
(For Battle & Mordecai),
Solicitors for Defendants, Appellees.

PATAPSCO GUANO COMPANY v. NORTH CAROLINA BOARD OF AGRICULTURE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

No. 9. Argued March 3, 4, 1898. — Decided May 31, 1898.

The act of the legislature of North Carolina of January 21, 1891, must be regarded as an act providing for the inspection of fertilizers and fertilizing materials in order to prevent the practice of imposition on the people of the State, and the charge of twenty-five cents per ton as intended merely to defray the cost of such inspection; and as it is competent for the State to pass laws of this character, the requirement of inspection and payment of its cost does not bring the act into collision with the commercial power vested in Congress, and clearly this cannot be so as to foreign commerce, for clause two of section ten of article one expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and the same principle must apply to interstate commerce.

THE case is stated in the opinion.

Mr. Thomas N. Hill and *Mr. John W. Hinsdale* for appellant.

Mr. R. H. Battle, Mr. J. C. L. Harris and *Mr. F. H. Busbee* for appellees.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This was a bill filed in the Circuit Court of the United States for the Eastern District of North Carolina, April 1, 1892, seeking to enjoin the collection of an inspection charge of twenty-five cents per ton on commercial fertilizers, as prescribed by an act of the general assembly of North Carolina of January 21, 1891, and from taking any steps whatever to enforce that act, on the ground of its unconstitutionality.

The court entered a restraining order, but, on the coming in of the answer, a motion to continue the injunction until the

hearing was heard on bill, answer, affidavits and exhibits, and denied, and the temporary injunction dissolved. The opinion of the Circuit Court by Seymour, J., is reported in 52 Fed. Rep. 690. Proofs were taken, and a final hearing had at June term, 1893, at Raleigh; the bill was dismissed; and complainants thereupon prosecuted this appeal.

By section fourteen of article nine of the constitution of North Carolina of 1875–76, it was provided that, as soon as practicable after the adoption of that instrument, the general assembly should "establish and maintain, in connection with the University, a Department of Agriculture, of Mechanics, of Mining and of Normal Instruction."

By an act of March 12, 1877, (Laws N. C. 1876–77, 506, c. 274,) such a department was established, and, among other things, the subject of commercial fertilizers dealt with. By the eighth section, manipulated guanos, superphosphates or other commercial fertilizers were forbidden to be sold or offered for sale, until the manufacturer or person importing the same had obtained a license therefor on payment of a privilege tax of five hundred dollars per annum for each separate brand or quality.

By section nine, every bag, barrel or other package of such fertilizer offered for sale was required to have thereon a label or stamp setting forth the name, location and trade-mark of the manufacturer; the chemical composition of the contents, and the real percentage of certain specified ingredients; and that the privilege tax had been paid. By section ten, the board was empowered to collect samples for analysis; by section eleven, to require railroad and steamboat companies to furnish monthly statements of the quantity of fertilizers transported; and by section twelve, to establish an agricultural experiment and fertilizer central station in connection with the chemical laboratory of the University, and the trustees of the University, with the approval of the board, were directed to employ an analyst, skilled in agricultural chemistry, whose duty it should be "to analyze such fertilizers and products as may be required by the Department of Agriculture, and to aid as far as practicable in suppressing fraud in the sale of com-

mercial fertilizers;" and whose salary was to be paid "out of the funds of the Department of Agriculture."

The sections bearing on this subject were carried forward in the code of 1883, volume II, c. 1, §§ 2190 *et seq.*

In August, 1890, the Circuit Court for the Eastern District of North Carolina, Bond and Seymour, JJ., held that section 2190 of the code, declaring that no commercial fertilizers should be sold or offered for sale until the manufacturer or importer obtained a license from the treasurer of the State, for which should be paid a privilege tax of five hundred dollars per annum for each separate brand, was in violation of the Federal Constitution and void. *American Fertilizing Co.* v. *Board of Agriculture of North Carolina*, 43 Fed. Rep. 609.

Thereupon, by the act of January 21, 1891, Laws 1891, 40, c. 9, volume II, c. 1 of the code was amended, and sections 2190, 2191 and 2193 were made to read as follows:

"SEC. 2190. For the purpose of defraying the expenses connected with the inspection of fertilizers and fertilizing materials in this State there shall be a charge of twenty-five cents per ton on such fertilizers and fertilizing material for each fiscal year ending November thirtieth, which shall be paid before delivery to agents, dealers or consumers in this State: *Provided*, the board shall [have] the discretion to exempt certain natural material as may be deemed expedient. Each bag, barrel or other package of such fertilizers or fertilizing materials shall have attached thereto a tag stating that all charges specified in this section have been paid, and the state Board of Agriculture is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will enable them to enforce this law. Any person, corporation or company who shall violate this chapter, or who shall sell or offer for sale any such fertilizers or fertilizing material contrary to the provisions above set forth, shall be guilty of a misdemeanor, and all fertilizers or fertilizing materials so sold or offered for sale shall be subject to seizure and condemnation in the same manner as provided in this chapter for the seizure and condemnation of spurious fertilizers, subject, how-

ever, to the discretion of the Board of Agriculture to release the fertilizers so seized and condemned upon the payment of the charge above specified and all costs and expenses incurred by the department in such proceeding: *Provided*, that tags shall be attached by manufacturers, agents or dealers to all fertilizers now in the State; those protected under license previously issued shall be furnished free of charge.

"SEC. 2191. Every bag, barrel or other package of such fertilizers or fertilizing materials as above designated offered for sale in this State shall have thereon plainly printed a label or stamp, a copy of which shall be filed with the Commissioner of Agriculture, together with a true and faithful sample of the fertilizer or fertilizing material which it is proposed to sell, at or before delivery to agents, dealers or consumers in this State and which shall be uniformly used and shall not be changed during the fiscal year for which tags are issued, and the said label or stamp shall truly set forth the name, location and trade-mark of the manufacturer; also the chemical composition of the contents of such package, and the real percentage of any of the following ingredients asserted to be present, to wit, soluble and precipitated phosphoric acid, which shall not be less than eight per cent; soluble potassa, which shall not be less than one per cent; ammonia, which shall not be less than two per cent, or its equivalent in nitrogen; together with the date of its analyzation, and that the requirements of the law have been complied with; and any such fertilizer as shall be ascertained by analysis not to contain the ingredients and percentage set forth as above provided shall be liable to seizure and condemnation as hereinafter prescribed, and when condemned shall be sold by the board of agriculture for the exclusive use and benefit of the department of agriculture."

Section 2192 refers to the proceedings to condemn.

"SEC. 2193. Any merchant, trader, manufacturer or agent who shall sell or offer for sale any commercial fertilizer or fertilizing material without having such labels, stamps and tags as hereinbefore provided attached thereto, or shall use the required tag the second time to avoid the payment of the

tonnage charge, or if any person shall remove any such fertilizer, (he) shall be liable to a fine of ten dollars for each separate bag, barrel or package sold, offered for sale or removed, to be sued for before any justice of the peace and to be collected by the sheriff by distress or otherwise, one half less the costs to go to the party suing and the remaining half to the department; and if any such fertilizer shall be condemned as herein provided it shall be the duty of the department to have an analysis made of the same and cause printed tags or labels expressing the true chemical ingredients of the same put upon each bag, barrel or package, and shall fix the commercial value thereof at which it may be sold; and any person who shall sell, offer for sale or remove any such fertilizers, or any agent of any railroad or other transportation company who shall deliver any such fertilizer in violation of this section shall be guilty of a misdemeanor."

Section 2196, which corresponded to section 12 of the act of March 12, 1877, was amended by the substitution of the word "control" for the word "central," and read as follows:

"SEC. 12. The department of agriculture shall establish . . . an agricultural experiment and fertilizer control station, and shall employ an analyst, skilled in agricultural chemistry. It shall be the duty of said chemist to analyze such fertilizers and products as may be required by the department of agriculture, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall, also, under the direction of said department, carry on experiments on the nutrition and growth of plants, with a view to ascertain what fertilizers are best suited to the various crops of this State; and whether other crops may not be advantageously grown on its soil, and shall carry on such other investigations as the said department may direct. He shall make regular reports to the said department, of all analyses and experiments made, which shall be furnished, when deemed needful, to such newspapers as will publish the same. . . . His salary shall be paid out of the funds of the department of agriculture."

The following was substituted for section 2205: "Whenever

any manufacturer of fertilizers or fertilizing materials shall have paid the charges hereinbefore provided his goods shall not be liable to any further tax whether by city, town or county."

Section 2208 remained unamended, and provided: "All moneys arising from the tax on licenses, from fines and forfeitures, fees for registration and sale of lands not herein otherwise provided for, shall be paid into the state treasury and shall be kept on a separate account by the treasurer as a fund for the exclusive use and benefit of the department of agriculture."

The various errors assigned question the decree on the grounds, in general, that the court should have held the act of January 21, 1891, to be in violation of the third clause of section eight, and of the second clause of section ten, of article one of the Constitution of the United States; that the charge required to be paid was so excessive that the act could not be sustained as a legitimate inspection law; or as a valid exercise of the police power; and that it was neither, because it was not limited to articles produced in the State, and because it did not relate to the health, morals or safety of the community.

The second clause of section 10 of article I of the Constitution reads: "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

The words "imports" and "exports," as therein used, have been held to apply only to articles imported from, or exported to, foreign countries. *Woodruff* v. *Parham*, 8 Wall. 123; *Pittsburg & Southern Coal Company* v. *Louisiana*, 156 U. S. 590, 600.

The clause recognized that the inspection of such articles may be required by the States, and that they may lay duties on them to pay the expense of such inspections, but as it

would be difficult, if not impossible, to determine the necessary amount with exactness and to remove any inducement to excess, it was provided that any surplus should be paid to the United States. As such laws are subject to the revision and control of Congress, it has been suggested that whether inspection charges are excessive or not might be for Congress to determine and not the courts, which would also be so where inspection laws operate on interstate as well as foreign commerce. *Neilson* v. *Garza*, 2 Woods, 287; *Turner* v. *Maryland*, 107 U. S. 38.

Considered as an inspection law and as not open to attack as in contravention of that clause, the questions still remain whether an inspection law can operate on importations as well as exportations; and whether in this instance the charge was so excessive as to deprive the act of its character as an inspection law or as a legitimate exercise of protective governmental power, and make it a mere revenue law obnoxious to the objection of being an unlawful interference with interstate commerce. Counsel for plaintiff in error insists that this result is deducible from the legislation of North Carolina making appropriations from the funds of the department of agriculture received from the charge on fertilizers or fertilizing materials; as also from the evidence submitted on the hearing.

It will be more convenient to first dispose of the latter contention.

By section 2206 of the code of 1883, the board of agriculture was directed to "appropriate annually, of the money received from the tax on fertilizers, the sum of five hundred dollars for the benefit of the North Carolina Industrial Association, to be expended under the direction of the board of agriculture."

By chapter 308 of the laws of 1885, Laws, N. C. March 11, 1885, 553, the establishment of an industrial school was provided for, to the establishment and maintenance of which the board was directed by the fourth section to apply their surplus funds, not exceeding five thousand dollars annually.

By chapter 410 of the laws of 1887, Laws, N. C. March 7,

1887, 718, the name of the industrial school was changed to "The North Carolina College of Agriculture and Mechanic Arts," and the board was required by section six to turn over to that institution annually "the whole residue of their funds from licenses on fertilizers remaining over and not required to conduct the regular work of that department."

But by chapter 348 of the laws of 1891, Laws, N. C. March 6, 1891, 404, the provision last above given was stricken out, and by section five of the act $10,000 for the year 1891 and $10,000 for the year 1892 were appropriated to the college; and by chapter 426 of the laws of 1891, Laws, N. C. March 7, 1891, 491, an annual appropriation of five hundred dollars was made to the North Carolina Industrial Association. These appropriations were made from the state treasury, and both acts contained the usual repealing clauses.

By section 2198 and subsequent sections of the act of 1883, the geological survey of the State, the geological museum, the appointment of the state geologist, and matters pertaining thereto, were dealt with, and various expenditures connected therewith were authorized to be paid out of the general fund of the agricultural department, the sources of which were apparently not confined to what might be derived from the license tax in respect of fertilizers.

By chapter 409 of the laws of 1887, (Laws, 1887, 714,) so much of the sections of the act pertaining to the state geologist as required the department to fix the compensation, to regulate the expenditures, or pay out of their funds the salary and expenses of the state geologist, was repealed.

Section fourteen of this act empowered the department to expend from the amount arising from the tax on fertilizers for 1887–88, the expenses for the completion of the oyster survey; but by chapter 338 of the laws of 1891, (Laws, 1891, 369,) provision was made for defraying the expenses of the regulation of the oyster industries of the State from other sources.

We agree entirely with the Circuit Court that the legislation of 1891 not only amended the code in the matter of the requirement of the privilege tax of five hundred dollars,

but repealed all laws making any substantial diversion of the money to be derived from the charge on fertilizers of twenty-five cents per ton, to any other purposes than those connected with the necessary expenses of inspection. It is ingeniously argued that as section 6 of chapter 410 of the laws of 1887 repealed by substitution section 4 of chapter 308 of the laws of 1885, the repeal thereof by chapter 348 of the laws of 1891 revived the latter section, and hence that $5000 of the amount arising from the present charge on fertilizers became appropriated to the industrial school, it being asserted that the funds of the department were in fact derived therefrom; and also that the appropriation out of the state treasury of five hundred dollars to the industrial association by chapter 426 of the laws of 1891 was an additional appropriation, and did not repeal section 2206 of the code, which directed the board of agriculture to appropriate that sum to that association.

These positions do not commend themselves to our judgment. As to the appropriation of five hundred dollars, we think, under the circumstances, that it was intended to be in lieu of the former appropriation of that amount; and as to the revival of the act of 1885 by the repeal of the repealing act of 1887, we regard the doctrine that the repeal of a repealing act revives the first act as wholly inapplicable. In our opinion such a conclusion would be opposed to the obvious legislative intention in the enactment of the law of 1891. This act imposed a charge of twenty-five cents per ton on commercial fertilizers, and the purpose of the charge was declared to be to defray the expenses of inspection only. The previous laws had imposed a tax of five hundred dollars per brand upon every brand and description of fertilizer, and declared the same to be a privilege tax. It is impossible to impute to the general assembly the intention, in repealing parts of the code which had been declared unconstitutional, to revive earlier laws which might render the amended law liable to the same objections.

Entertaining these views of the legislative intention, it does not appear to us that evidence tending to show that money

collected from this source was applied to other than the purposes for which it was received should be entered into on this inquiry into the validity of the act. If the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the legislature would moderate the charge. But treating the question whether the charge of twenty-five cents per ton was shown to be so excessive as to demonstrate a purpose other than that which the law declared, as a judicial question we are satisfied that comparing the receipts from this charge with the necessary expenses, such as the cost of analyses, the salaries of inspectors, the cost of tags, express charges, miscellaneous expenses of the department in this connection, and so on, we cannot conclude that the charge is so seriously in excess of what is necessary for the objects designed to be effected, as to justify the imputation of bad faith and change the character of the act.

Inspection laws are not in themselves regulations of commerce, and while their object frequently is to improve the quality of articles produced by the labor of a country and fit them for exportation, yet they are quite as often aimed at fitting them, or determining their fitness, for domestic use, and in so doing protecting the citizen from fraud. Necessarily, in the latter aspect, such laws are applicable to articles imported into, as well as to articles produced within, a State.

Clause two of section ten expressly allows the State to collect from imports as well as exports the amounts necessary for executing its inspection laws, and Chief Justice Marshall expressed the opinion in *Brown* v. *Maryland* that imported as well as exported articles were subject to inspection.

The observations of Mr. Justice Bradley, on circuit, in *Neilson* v. *Garza*, are quite apposite on this and other points under discussion, and may profitably be quoted.

That case involved the validity of a law of the State of Texas, providing for the inspection of hides, and Mr. Justice Bradley said:

"If the state law of Texas, which is complained of, is really an inspection law, it is valid and binding unless it interferes

with the power of Congress to regulate commerce, and if it does thus interfere, it may still be valid and binding until revised and altered by Congress. The right to make inspection laws is not granted to Congress, but is reserved to the States; but it is subject to the paramount right of Congress to regulate commerce with foreign nations, and among the several States; and if any State, as a means of carrying out and executing its inspection laws, imposes any duty or impost on imports or exports, such impost or duty is void if it exceeds what is absolutely necessary for executing such inspection laws. How the question, whether a duty is excessive or not, is to be decided, may be doubtful. As that question is passed upon by the state legislature, when the duty is imposed, it would hardly be seemly to submit it to the consideration of a jury in every case that arises. This might give rise to great diversity of judgment, the result of which would be to make the law constitutional one day, and in one case, and unconstitutional another day, in another case. As the article of the Constitution which prescribes the limit goes on to provide that 'all such laws shall be subject to the revision and control of Congress,' it seems to me that Congress is the proper tribunal to decide the question, whether a charge or duty is or is not excessive. If, therefore, the fee allowed in this case by the state law is to be regarded as in effect an impost or duty on imports or exports, still if the law is really an inspection law, the duty must stand until Congress shall see fit to alter it.

"Then we are brought back to the question whether the law is really an inspection law. If it is, we cannot interfere with it on account of supposed excessiveness of fees. If it is not, the exaction is clearly unconstitutional and void, being an unauthorized interference with the free importation of goods. The complainant contends that it is not an inspection law; that inspection laws only apply legitimately to the domestic products of the country, intended for exportation; and that no inspection is actually required in this particular case, but a mere examination to see if the hides are marked, and who imported them, etc., duties which belong to the entry of goods, and not their inspection.

"No doubt the primary and most usual object of inspection is to prepare goods for exportation in order to preserve the credit of our exports in foreign markets. Chief Justice Marshall, in *Gibbons* v. *Ogden*, says: 'The object of inspection laws is to improve the quality of articles produced by the labor of a country; to fit them for exportation, or it may be, for domestic use.' 9 Wheat. 203; Story on the Const., § 1017. But in *Brown* v. *Maryland*, he adds, speaking of the time when inspection takes place: 'Inspection laws, so far as they act upon articles for exportation, are generally executed on land before the article is put on board a vessel; so far as they act upon importations, they are generally executed upon articles which are landed. The tax or duty of inspection is a tax which is frequently, if not always, paid for service performed on land.' 12 Wheat. 419; Story on the Const., § 1017. So that, according to Chief Justice Marshall, imported as well as exported goods may be subject to inspection; and they may be inspected as well to fit them for domestic use as for exportation.

"All housekeepers who are consumers of flour know what a protection it is to be able to rely on the inspection mark for a fine or superior article. Bouvier defines inspection as the examination of certain articles made by law subject to such examination, so that they may be declared fit for commerce. Law Dict. *verb.* 'Inspection.' The removal or destruction of unsound articles is undoubtedly, says Chief Justice Marshall, an exercise of that power. *Brown* v. *Maryland*, *supra;* Story on the Const., § 1024. 'The object of the inspection laws,' says Justice Sutherland, 'is to protect the community, so far as they apply to domestic sales, from frauds and impositions; and in relation to articles designed for exportation, to preserve the character and reputation of the State in foreign markets.' *Clintsman* v. *Northrop*, 8 Cowen, 46. It thus appears that the scope of inspection laws is very large, and is not confined to articles of domestic produce or manufacture, or to articles intended for exportation, but applies to articles imported, and to those intended for domestic use as well." 2 Woods, 287, 289.

But in *Turner* v. *Maryland*, 107 U. S. 38, which related only to the laws of Maryland so far as providing for the prep-

aration for exportation of tobacco grown in the State, any opinion as to the provisions of those laws referring to the inspection of tobacco grown out of Maryland was expressly reserved.

In *Voight* v. *Wright*, 141 U. S. 62, 65, a statute of Virginia relating to the inspection of flour brought into that Commonwealth was held to be unconstitutional, because it required the inspection of flour from other States when no such inspection was required of flour manufactured in Virginia, an objection to which the act under consideration is not open, for the inspection and payment of its cost are required in respect of all fertilizers, whether manufactured in the State or out of it, and it is conceded that fertilizers are manufactured in North Carolina, as, indeed, their many laws incorporating companies for the purpose of so doing plainly indicate. Mr. Justice Bradley in that case remarked that the question was "still open as to the mode and extent in which state inspection laws can constitutionally be applied to personal property imported from abroad, or from another State, — whether such laws can go beyond the identification and regulation of such things as are strictly injurious to the health and lives of the people, and therefore not entitled to the protection of the commercial power of the government, as explained and distinguished in the case of *Crutcher* v. *Kentucky*, *ante*, 47, just decided."

Whenever inspection laws act on the subject before it becomes an article of commerce they are confessedly valid, and also when, although operating on articles brought from one State into another, they provide for inspection in the exercise of that power of self-protection commonly called the police power.

No doubt can be entertained of this where the inspection is manifestly intended, and calculated in good faith, to protect the public health, the public morals, or the public safety. *Minnesota* v. *Barber*, 136 U. S. 313. And it has now been determined that this is so, if the object of the inspection is the prevention of imposition on the public generally.

In *Plumley* v. *Massachusetts*, 155 U. S. 461, it was decided that a statute of Massachusetts "to prevent deception in the

manufacture and sale of imitation butter," in its application to the sale of oleomargarine artificially colored so as to cause it to look like yellow butter, and brought into Massachusetts, was not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the several States. That decision explicitly rests on the ground that the statute sought to prevent a fraud upon the general public. It is true that an article of food was involved, but the sole ground of the decision was that the State had the power to protect its citizens from being cheated in making their purchases, and that thereby the commercial power was not interfered with. *Schollenberger* v. *Pennsylvania*, 171 U. S. 1.

Where the subject is of wide importance to the community, the consequences of fraudulent practices generally injurious, and the suppression of such frauds matter of public concern, it is within the protective power of the State to intervene. Laws providing for the inspection and grading of flour, the inspection and regulation of weights and measures, the weighing of coal on public scales, and the like, are all competent exercises of that power, and it is not perceived why the prevention of deception in the adulteration of fertilizers does not fall within its scope.

It is apparent that there is no article entering into common use in many of the States, and particularly the Southern States, the inspection of which is so necessary for the protection of those citizens engaged in agricultural operations, as commercial fertilizers. Certain ingredients, as ammonia or nitrogen, phosphoric acid and potash, make up the larger part of the value of these fertilizers, and without the aid of scientific analysis, the amount of these ingredients cannot be ascertained nor whether the fertilizer sold is of a uniform grade. The average farmer was compelled, without an analysis, to depend on his sense of smell, or his success, or failure, during the previous year with the same brand or name, to determine the relative amounts of the essential ingredients, and the value of the materials. To protect agricultural interests against spurious and low grade fertilizers was the object

of this law, which simply imposed the actual cost of inspection, necessarily varying with the agricultural condition of the various years. The label or tag could only be furnished after an analysis, the result of which was therein stated. In that light, the law practically required an analysis in every case, and was sustained as so doing by the Supreme Court of North Carolina in *State* v. *Norris*, 78 N. C. 443.

The act of 1877, requiring the obtaining of a license to sell fertilizers on the payment of a privilege tax of five hundred dollars, was considered in that case, at January term, 1878, of that court, and held valid under the state constitution as intended to protect the public from being imposed on by adulterated fertilizers, and to keep the traffic in the hands of responsible parties, making the means to that end self-sustaining by the license tax. And it was also decided that the law was not in conflict with the Federal Constitution on the authority of *Woodruff* v. *Parham*, 8 Wall. 123, and *Hinson* v. *Lott*, 8 Wall. 148.

As before remarked, the sections of the act of 1877 relating to this subject were carried forward into the code of 1883, and section 2190 required the license and imposed the privilege tax.

In *Stokes* v. *Department of Agriculture*, 106 N. C. 439 (1890), the Supreme Court held that section 2190, in prohibiting the sale, or the offering for sale, of fertilizers in North Carolina until the manufacturer or person importing the same should obtain a license, did not prohibit the use of them in the State, nor the purchase of them in another State, to be used for fertilizing purposes by the purchaser himself in North Carolina; and that, where a person acting for himself and others, resident farmers of the State, ordered from a non-resident manufacturer a number of bags of fertilizer, a given number being ordered for each purchaser, and the same was shipped in separate parcels, addressed to different purchasers separately, and separate bills sent to each purchaser, there being no intent to evade the statute, the transaction did not come within the inhibition of section 2190, and the goods were not liable to seizure at the instance of the department of agriculture.

Similar laws of other States, regulating the sale of fertilizers, have been sustained on the same ground.

In *Steiner* v. *Ray*, 84 Alabama, 93, it was held that a statute regulating the sale of commercial fertilizers, when its controlling purpose was to guard the agricultural public against spurious and worthless compounds sometimes sold as fertilizers, and to furnish to buyers cheap and reliable means of proving the deception and fraud, should such be attempted, was strictly within the pale of police regulation and was constitutional. And this case was cited with approval in *Kirby* v. *Huntsville Fertilizer &c. Co.*, 105 Alabama, 529, where it was ruled that the sale of commercial fertilizers was void unless each sack, parcel or package was tagged as required by statute at the time the right of property passed from the vendor to the vendee.

In *Vanmeter* v. *Spurrier*, 94 Kentucky, 22, an act of Kentucky, "to regulate the sale of fertilizers in this Commonwealth, and to protect agriculturists in the purchase and use of the same," was sustained; and it was held that the statute could not be fairly construed to authorize the levy of an impost on interstate commerce beyond what was necessary to inspection. The court said: "The statute, as its title indicates, was enacted for protection of farmers of this Commonwealth against fraud and imposition of those having for sale commercial fertilizers. To accomplish that object, each one selling, or offering for sale, any fertilizer is required to submit a sample for analysis and test of its quality at the Experimental Station. For that purpose only can the fees collected by the director be used, and in that way and to that extent only can farmers of the Commonwealth be benefited by the statute. In our opinion the law is valid in every respect."

In *Faircloth* v. *De Leon*, 81 Georgia, 158; *Goulding Fertilizer Company* v. *Driver*, 25 S. E. Rep. 922, and other cases, the Supreme Court of Georgia has held that the seller of commercial fertilizers, which had not been inspected as the law required, could not maintain against the buyer an action for the price; but in *Martin* v. *Upshur Guano Company*, 77

Georgia, 257, that the statute was not applicable where sale and delivery were without the State.

The act of January 21, 1891, must be regarded, then, as an act providing for the inspection of fertilizers and fertilizing materials in order to prevent the practice of imposition on the people of the State, and the charge of twenty-five cents per ton as intended merely to defray the cost of such inspection. It being competent for the State to pass laws of this character, does the requirement of inspection and payment of its cost bring the act into collision with the commercial power vested in Congress? Clearly this cannot be so as to foreign commerce, for clause two of section ten of article one expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and we think the same principle must apply to interstate commerce.

In any view, the effect on that commerce is indirect and incidental, and "the Constitution of the United States does not secure to any one the privilege of defrauding the public."

Decree affirmed.

MR. JUSTICE HARLAN and MR. JUSTICE WHITE dissented.